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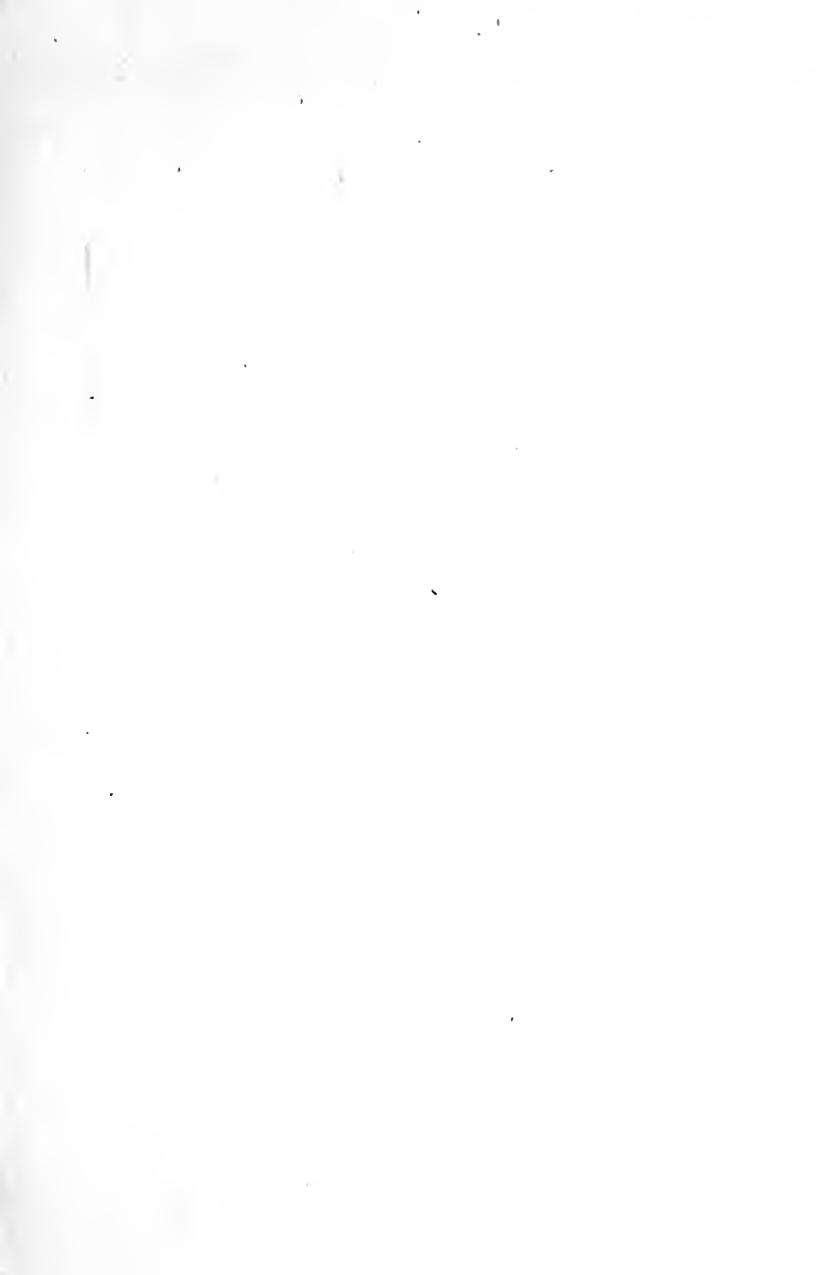
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AMERICAN COMMERCIAL LEGISLATION BEFORE 1789

BY

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PREFACE

In the preparation of the work, which has extended over several years, the Charlemagne Tower collection of colonial laws in the rooms of the Historical Society of Pennsylvania, Philadelphia, has been of great assistance. Some of the material was secured in London at the Public Record Office and at the British Museum. Several books and manuscripts found in the United States were difficult of access, and much labor was required to secure the data contained in them. Acknowledgment is hereby made of the assistance received from the Carnegie Institution of Washington in the collection and preparation of materials for this monograph.

The author desires especially to thank Professor Emory R. Johnson of the University of Pennsylvania for the assistance he has given in planning and preparing this book, and for the many suggestions he has made during the progress of the work. Thanks are also due to Professors Jeremiah W. Jenks, Charles A. Hull, and Frank A. Fetter of Cornell University for criticisms of the manuscript.

ALBERT A. GIESECKE.

Cuzco, Peru, July, 1910.

TABLE OF CONTENTS

CHAPTER I. ENGLAND'S COMMERCIAL POLICY TOWARD THE AMERICAN COLONIES.

	PAGE
The Mercantile System	1
The Development of England's Commercial Policy	3
Supervision of Colonial Legislation	9

CHAPTER II. IMPORT AND EXPORT DUTIES.

Import Duties	18
Scope of the Import Duties	18
Import Duties on Direct Trade	21
English Goods and Imposts Thereon	26
Import Duties on Negro Slaves	31
Free Trade and the Importation of Goods	36
Retaliatory Acts	40
Drawbacks	41
Export Duties	42
Scope of the Export Duties	42
Purpose of the Export Duties	43
Export Duties on Tobacco	45
Export Duties on Lumber	49
Export Duties on Skins and Furs	53

CHAPTER III. BOUNTIES, INSPECTION LAWS AND EMBARGOES.

Bounties	59
Bounties for Production	60
Bounties for Exportation	71
Inspection Regulations	74
The General Inspection Policy in Outline	74
Embargoes	80
Purpose and Extent of Embargoes	80
Administration of the Embargo Acts	84

CHAPTER IV. TONNAGE DUTIES.

Purpose of the Tonnage Duties	86
Tonnage Duties and English Ships	88

TABLE OF CONTENTS

	PAGE
Exemptions to Home Shipping	90
Exemptions to Ships of Other Colonies	96
CHAPTER V. PORT REGULATIONS.	
Navigation Regulations	100
Ports of Entry and Port Control	100
Registry of Vessels	112
Port Fees	113
Extent and Policy of Port Fees	113
Pilotage	118
Appointment and Duties of Pilots	118
Compulsory and Optional Pilotage	121
CHAPTER VI. COMMERCIAL POLICY FROM THE REVOLUTION TO 1789.	
Commercial Legislation by the States	123
Embargoes During the Revolution	123
Tariff Legislation	125
The Shipping Policy	137
Commercial Legislation by the Confederacy	140
Attempts of Congress to Regulate Commerce	140
The Annapolis and Philadelphia Conventions	146
CHAPTER VII. CONCLUSIONS	149
Bibliography	154
Index	165



AMERICAN COMMERCIAL LEGIS- LATION BEFORE 1789

CHAPTER 1

ENGLAND'S COMMERCIAL POLICY TOWARD THE AMERICAN COLONIES

The Mercantile System. As a background for the commercial legislation of the American colonies, we should keep in mind the purposes which these colonies were expected to serve in the general scheme of the British Empire.¹ Although England's colonial policy was more liberal than any other contemporaneous colonial system, yet it too was limited by the system of mercantilism which was prevalent in Europe during most of the seventeenth and eighteenth centuries.² It was under such an influence that England shaped her commercial policy towards the American colonies.

The general features of the mercantile system have become well-known through the account which Adam Smith has given us, although this account has been subject to qualification. Two fundamental characteristics of the system were founded in the belief (a) that wealth consisted in money,—gold and silver, and (b) that these precious metals could be brought to a country and kept

¹ Hertz in "The Old Colonial System" expresses himself as follows: "In actual fact, the old colonial policy was based upon the very sensible ideal of a self-sufficing empire," p. 38.

² Smith, *Wealth of Nations*, III, 322.

there only by means of a favorable balance of trade, i. e., by an excess of exports over imports.³ As a logical consequence, the importation of foreign goods for home consumption had to be curtailed or prohibited; the exportation of the produce of domestic industry increased. Such a system made it incumbent upon the state to regulate the foreign commerce of the nation in order to secure an excess of exports, and thereby preserve and increase the circulation of money in the State. Difficulties were placed in the way of the importation of manufactured goods, and home industries were encouraged by restricting the export of raw materials; home shipping was encouraged, as were also the fisheries, by restricting or forbidding foreign competition; bounties on exports and imports for certain classes of goods were provided, especially on imports of raw materials from the colonies; the colonies themselves were looked upon primarily as sources of profit and their trade was reserved, with exceptions, to the merchants of the mother country.

Such were some of the salient features of the mercantile system which was built up on the whole for the benefit of the producer or the merchant, and not the consumer. The spirit of this system underlies practically the whole of the development of England's commercial policy toward her American colonies.⁴

Earlier writers have condemned England's colonial policy on account of the underlying idea that the colonies were restricted in their commercial activities. Thus Adam Smith tells us that "to prohibit a great people from making all that they can of every part of their own

³ Smith, *Wealth of Nations*, III, 104; Hertz, *op. cit.*, p. 38.

⁴ Although the term "American colonies" is used in the sense of England's continental colonies, we must not overlook the fact that the British West Indies and other possessions also came under the influence of British colonial policy.

produce, or from employing their stock and their industry in the way that they judge most advantageous to themselves, is a manifest violation of the most sacred rights of mankind.”⁵ Starting with such a preconception, many writers have concluded that the application of such a principle must have been harmful in operation.⁶ Viewed from the modern standpoint, the British colonial policy (though more liberal than that of other European powers at the time) was selfish and to some extent at least economically disadvantageous but with certain compensating advantages. Schmoller, speaking of mercantilism in general, maintains that it was a necessary step in the evolution of our present society, replacing as it did “a local and territorial economic policy by that of the national state.”⁷

The Development of England's Commercial Policy. In outlining the more important phases of the development of England's colonial policy (so far as the continental colonies were concerned), we shall consider briefly the navigation acts and the enumerated commodities, the restrictions upon colonial manufactures, and the encouragements to colonial industry.

In the navigation act of Cromwell in 1651 we see the first real development of a commercial policy on the part of England. Prior to this act, the policy of the English sovereigns was influenced by motives of momentary importance,⁸ largely political and moral in their nature.

⁵ Smith, *Wealth of Nations*. (Chap. VII, on Colonies.)

⁶ Egerton, *British Colonial Policy*, 69, 70; cf. W. J. Ashley, *Surveys Historic and Economic*, 310, 311, 335; Hertz, *The Old Colonial System*, 37, 38; Beer, *Commercial Policy of England*, 7, 8.

⁷ “In its innermost kernel it is nothing but state making . . . which creates out of the political community an economic community, and so gives it a heightened meaning.”—*The Mercantile System*. (Econ. Classics, ed. by W. J. Ashley), pp. 50, 51.

⁸ Beer, *op. cit.*, 35.

Subsequent to this act, the policy, under the influence of the mercantile system became chiefly economic, and as such developed more systematically and more rapidly than previously. Space will not permit a portrayal of the more salient features prior to this date: the period, however, was characterized by a relative freedom of trade.

The act of 1651 provided, in essence, protection to English shipping and dealt with the monopoly of navigation.⁹ This act was also intended to restrict the trade of the Dutch,—England's most successful commercial rival. Its chief provisions were (a) goods of the growth or manufacture of Asia, Africa, or America were to be imported into England or any portion of her dominions only in English ships manned in large part by English seamen; (b) goods of the growth and manufacture of Europe were to be imported into England or any portion of her dominions, either in English ships or in the ships of the nation in which these goods were produced and manufactured; (c) goods of foreign growth or manufacture had to be brought direct from the country in which they were produced, or from those ports whence these goods were usually exported.¹⁰

This act did not monopolize colonial trade; it permitted foreign nations to trade with the colonies practically as before, only compelling them to employ their own or English ships.

The Virginia tobacco planters among others made complaints as to the effects of the provisions of this act.¹¹

The act of 1660 changed the scope of the earlier act

⁹ Efforts in this direction had been made from the time of Richard II, in 1377. Cunningham, *The Growth of English Industry and Commerce*, I, 338.

¹⁰ The text of this act is in Scobell, *Collection of Acts and Ordinances of General Use*, II, 176, 177.

¹¹ Ashley, *op. cit.*, 312, 313.

protecting shipping. Goods could be imported or exported from the English plantations in ships *built* and owned by the people in England or in the English plantations. The master and three-fourths of the crew had to be English. Foreign goods were to be imported into England directly from the place of growth or production, or from the ports from which these goods were usually shipped. This act was strengthened three years later by a provision making foreign-built vessels alien, and requiring European goods to be first landed in England before being exported to the colonies.¹² A further act was passed in 1672 whereby goods brought from one colony to another were liable to pay the same customs duties which they would have paid if brought to England.

Another important regulation was the one in the eighteenth section of the act of 1660. It enumerated commodities which could be exported to England alone. These included sugar, tobacco, cotton-wool, indigo, ginger and fustic or other dyeing woods,—commodities which were the products of the southern and West India colonies. The only one of any consequence to the southern colonies at that time, however, was tobacco. Bond was to be given to land these commodities in England or Ireland.¹³ Grain, salt provisions and fish were not enumerated, because their importation into English markets would have seriously interfered with similar commodities produced in England. She was glad to have them exported elsewhere. Hence England was influenced “not so much from any regard to the interests of America as from a jealousy of

¹² Except salt for the fisheries, wine from Madeira and the Azores, and provisions from Scotland and Ireland.

¹³ Rabbeno attributes this act to the beginnings of manufacturing in the colonies, and the consequent fear of England for her own interests. *Op. cit.*, 19. Other commodities were also required by the act of 1660 and subsequently, to pay high duties on importation into England, or were absolutely forbidden.

this interference.”¹⁴ The list of enumerated commodities was added to from time to time, including naval stores (tar, pitch, turpentine, hemp, masts and yards) in 1706; rice in 1706, but subsequent to 1730 it could be exported to countries south of Cape Finisterre; copper ore, bar and pig iron, pot and pearl ashes, and beaver skins in 1722; whale fins, hides and molasses in 1733; coffee, pimento and cocoanuts, etc., in 1764.

The effect of these restrictions upon the commerce of the colonies has been exaggerated, however we may look upon the principles involved. The article which was most seriously affected was tobacco.¹⁵ In this instance its production was prohibited in England, and high duties were imposed upon Spanish tobacco, thus securing to American tobacco a monopoly of the English market. Tobacco for continental ports had to be shipped to England, which involved warehouse and higher freight charges—paid of course chiefly by the colonists. On rice, the restriction of 1706 also worked hardship, since Carolina for the time practically lost the Portuguese market.¹⁶

One word further must be said at this place in regard to the restrictions placed upon commodities. The colonists had undertaken a profitable trade with the West Indies, and in this way had secured gold and silver to meet the unfavorable balances due England for manufactured articles. It was, however, urged by certain interests in England that the trade of the northern colonies with the French, and even with the Dutch and Spanish West Indies, was harmful to the sugar industry in the British West Indies. Hence, after repeated complaint and peti-

¹⁴ Smith, *Wealth of Nations*, II, 312.

¹⁵ Bogart, *Economic History of the U. S.*, 39; Beer, *British Colonial Policy*, chap. X.

¹⁶ It seems that Ashley minimizes somewhat unduly the effects of this restriction. Cf. *op. cit.*, 316, 317.

tion, Parliament in 1733 passed the "Molasses Act." This act ostensibly provided for revenue on rum, molasses and sugar from the foreign countries when imported into the colonies, but the duty on molasses was practically prohibitory, and its enforcement, particularly in the New England colonies, would have meant a serious interruption to commerce. Without a free market in the West Indies, these colonies could not dispose of their commodities with profit, and would thus be unable to secure the precious metals necessary to pay their debts to England. It is but little wonder, therefore, that the act was flagrantly evaded.¹⁷

The restriction of colonial manufactures furnishes us another class of acts passed by Parliament. These were the acts relating to wool, hats, and the erection of steel furnaces and slitting mills. The export of wool or woollen goods from the colonies, or from one colony to another, was prohibited in 1699. This act did not interfere with the making of woollen articles within the family for domestic needs. A somewhat similar policy was pursued in 1732, when, upon the petition of the Company of Feltmakers, Parliament prohibited the exportation of hats from any colony, and further restricted the making of hats in the colonies to those who had served an apprenticeship. Iron-works for rolling or slitting iron, furnaces for making steel, and tilt-hammers for forges were prohibited in 1750, almost at the close of the colonial period, although the production of bar and pig iron was encouraged by bounties.¹⁸

¹⁷ Beer, *op. cit.*, 122. "The Molasses Act remained practically a dead letter. Economically, it was a gross mistake, and was the outcome of the spirit of paternalism shown toward the English colonies in the West Indies." Cf. Ashley, *op. cit.*, 329-331.

¹⁸ Inquiries sent out by the Board of Trade and Plantations, and answered by the Governors of the several colonies, were used at times as the basis of Parliamentary action. As the result of one of these inquiries, subsequently submitted to the House of Commons, that

The last act was doubtless the greatest restriction upon colonial manufacture, and here as elsewhere, there appear conflicting views of the effects of these acts.¹⁹

Not all of the British legislation, however, was of a restrictive character. The policy of encouragement was also practiced. The usual form was the bounty on colonial produce imported into England. Drawbacks and preferential duties may also be looked upon as encouragements. We have already noted an illustration of the latter on tobacco shipped to England, Spanish tobacco paying higher duties than the colonial tobacco imported into England. Drawbacks were granted on colonial produce reexported from England. On foreign goods reexported from England to the American colonies, the same drawbacks were allowed as when reexported to any foreign country.²⁰ This privilege, however, was curtailed in 1763, when foreign goods from Europe or the East Indies, except wines, white calicoes and muslins, were reexported to the American colonies.

The change in England's attitude towards the colonies at the close of the French and Indian War, must be noted. With the creation of a large war debt, among other factors, it was deemed essential by the Grenville ministry to create a revenue in the colonies toward the payment of imperial expenses—practically for military purposes.

body declared in 1719 that "the establishment of manufactories in the colonies tends to render them more independent of Great Britain," *Jours. of the H. of Com.*, Vol. III. That same year a bill was introduced into the House of Commons, restricting the iron industry to the production of pig and bar iron, but the bill was dropped before it came to a vote.

¹⁹ Cf. Ashley, *op. cit.*, 320-327; Bogart, *op. cit.*, 44, 45; Beer, *Commercial Policy of England*, chapter IV.

²⁰ English merchants even complained that the drawbacks permitted the colonists to secure German linens cheaper than they could be secured in England itself. Smith, *Wealth of Nations*, III, 320-322.

The "Sugar Bill" of 1764 had this in view; in addition it attempted to correct the laxity of administration of the acts of trade. "It was the first statute distinctly taxing the colonies, and marked a radically new departure in colonial policy." There was an increase in the revenue, but it was not of any importance from the fiscal point of view.²¹ Its inadequacy was recognized and the famous Stamp Act was passed. The opposition to this act; the act of 1767 (imposing duties on glass, paper, painter's colors, red and white lead, and tea); and the retention of the duty on tea in 1770 followed in rapid succession. Colonial opposition reached such a stage that non-importation agreements were entered into throughout the colonies; furthermore, colonial industries received an added impetus in consequence of England's determination to tax the colonists. With the commencement of war, Parliament prohibited all trade with the colonies, and declared their vessels lawful prize. Thus the enforcement of the colonial system brought about the overthrow of England's commercial policy in the American colonies.

Supervision of Colonial Legislation. The development of England's commercial policy made it essential to have some sort of supervision over the colonies, to ensure the proper protection of her interests. Before touching upon this question, let us note briefly the position of the colonies in relation to the empire.

Three types of colonies were provided in America. The chartered colony, comprising the corporate colonies of New England and the proprietary provinces, secured certain privileges from the English crown. The grant or charter establishing these colonies guaranteed to the inhabitants a right to the powers and exemptions specified therein, as well as to others which were not specified but

²¹ Beer, *British Colonial Policy*, 123 et seq., 193, 276-235.

which were necessary to the enjoyment of those specified. Outside of these privileges the colonies were subject to the control of Parliament.²² The royal province, which became the predominant type in the eighteenth century, was more directly under the control of the Crown than the chartered colony. The executive and in fact the internal organization of these provinces could therefore be subjected to a greater degree of supervision, and in consequence developed a more uniform organization than was possible in the corporate or in the proprietary colony. In consequence of the privileges granted by the charter, the corporate colony assumed a degree of *de facto* self-government which did not accord well with a recognition of sovereign power in England. The crown could not lawfully remove or punish officials for inefficiency or disobedience. Yet these colonies were forced to recognize it about the time of the English revolution. The proprietary colonies did not develop such a degree of self-government; to secure it, the people frequently had bitter disputes with the proprietors. Owing to the difficulty of enforcing imperial policies in the corporate and the proprietary colonies, the royal province was emphasized by English officials as the proper type of colonial organization.²³

Although the colonies received certain privileges where the charter was granted, the question arises as to whether parliamentary legislation extended to the American colonies. In theory, Parliament could have legislated for the colonies as fully as it did for England. In point of

²² John Lind, *Acts Relating to the Colonies*, I, 81, 82, 183, 184; Pownall, *Administration of the Colonies*, London, 1774, II, 46-50, 95.

²³ Egerton, *British Colonial Policy*, 112, 113, 117-119; Greene, *Provincial Governor*, 91 et seq.; Greene, *Provincial America*, 184, 185; Osgood, *American Colonies in the Seventeenth Century*, I, xxvii et seq.; Pol. Sc. Quarterly, II, 443; Chalmers, *Revolt of the Colonies*, II, 5, 6, 42, 43.

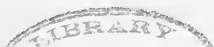
fact it did not do so with comparatively infrequent exceptions, in which cases the acts usually included the colonies by title. Laws passed before the settlement of the colonies and adapted to their conditions were enforced, yet even here the colonies often adopted them. The acts of trade and navigation were perhaps the most important that were applied to the colonies.²⁴ Because Parliament did not impose laws for revenue upon the colonies until the period prior to the Revolution (although measures to that effect had been proposed at various times) the colonists "insensibly drifted into the idea that Parliament could not legally tax them."²⁵ The enforcement of this principle by Parliament was one of the causes of the Revolution.

The colonies were thus permitted to legislate for their own internal needs. Provision to that end was made in the charter or the instructions to the Governor. A limitation was, however, placed upon colonial legislation: the acts must not be repugnant to the laws of England or inconsistent therewith, otherwise they would be declared null and void.²⁶ This limitation took various forms including the royal veto, instructions to the Governor not to assent to certain measures, suspension of acts until royal confirmation was secured, the inspection of the acts in England within a certain time limit provided in the charter or in the instructions to the Governor. To carry out the policy of imperial control over colonial legislation, therefore, some form of administrative machinery was

²⁴ Osgood, *American Colonies*, III, 512, 513; Greene, *Provincial Governor*, 55, 69, 97; Andrews, *Colonial Self-Government*, 37, 258; *Pol. Sc. Quarterly*, II, 445, 455.

²⁵ Beer, *British Colonial Policy*, 36-51. Cf. *Pol. Sci. Quarterly*, II, 463-465; Egerton, *British Colonial Policy*, 196 et seq.

²⁶ *Pa. Statutes at Large*, appdx., 610, 611; *N. Y. Col. Doc.* II, 296; see also Greene, *Provincial Governor*, appendix B for list of instructions to governors with references.



essential. To the governor and other officers this duty was immediately entrusted. The Board of Trade and Plantations, however, was the body which had a general supervision over the colonies.²⁷

Prior to 1696, the business of the plantations was looked after by committees, standing or special, of the privy council. In that year a permanent board was constituted, but still under the privy council.²⁸ The Board of Trade could recommend the confirmation or rejection of colonial laws, and during the periods of its prominence these recommendations were usually accepted. It must be remembered, however, that the Board was subordinate to the privy council, and that *de facto* it was practically a committee for information.²⁹

The exercise of the royal veto over colonial legislation in the royal provinces was recognized from the outset. The earlier charter colonies were not required to transmit their laws to England, but in 1681 the charter to Penn required all acts to be transmitted to England within five years of their enactment, and the council must then pass judgment upon them within six months. The charter

²⁷ To it was given the right to secure the data relating to the trade of England, and to make suggestions for improving particular trades. Other duties were also entrusted to them including the care of the records and papers belonging to the Plantation Office; the examination of instructions to Governors; the presentation of names of persons for Governor and other officials in the colonies to the king in council; the examination of the acts passed in the colonies; the hearing of complaints, with the power to send for papers and persons. Cf. Kellogg, *The American Colonial Charter*, in *Amer. Hist. Assn.*, 1903, I, 215.

²⁸ A convenient table of the various councils and their membership may be found in *N. Y. Col. Doc.* III, introduction. Early commissions to these councils, *ibid.*, III, 30, 32, 572. See also Egerton, *British Colonial Policy*, appendix B.

²⁹ Chalmers, *Opinions of Eminent Lawyers*, I, pp. vi-xvii, xx; Kellogg, *op. cit.*, *Amer. Hist. Assn.*, 1903, I, 207-215; Greene, *Provincial America*, 47, 48.

of Massachusetts (1691) provided that the acts had to be transmitted within three years, yet, like the corporate colonies, it resisted or denied the power of the council. Similar provisions were usually found in the other charters.³⁰ The colonial laws of a commercial nature, which were actually disallowed by the crown, fall under two heads; viz.: those which were technically illegal—poorly drawn up or exceeding the legislative powers—and those which were deemed contrary to the English law or interests. An instance of the former is found in an act of Pennsylvania providing for the improvement of the navigation of the Delaware River. The act was sent to the crown's lawyer, who declared it unwarranted by the grants in the charter, and prejudicial to his Majesty's interests. The council nevertheless decided to recommend its confirmation—which was not infrequently done where it was believed that the act would confer a benefit upon the colony.³¹ The tariff legislation of the colonies was the cause of numerous royal vetoes, and led to instructions to Governors, not to pass such acts without a clause suspending their operation until approved by the Crown.³² The Board of Trade, in 1766, stated that "the general policy to which we . . . refer is that of not

³⁰ Poore, *Charters and Constitutions*, I, 952, II, 1512; Andrews, *Colonial Self-Government*, 37; *Pa. Statutes at Large*, VIII, 581, 582; Pownall, *Administration of the Colonies*, I, 77, 78. Anderson asserts that in a report of the Board of Trade for 1733 it was found that "Rhode Island and Connecticut being charter governments, had little or no correspondence with our office, and we are very little informed of what is doing in their governments; they not being under obligations to return authentic copies of their laws to the Crown for disallowance, or to give any account of their proceedings." *History of Commerce*, II, 622, 623. Cf. Chalmers, *Revolt of the Colonies*, II, 114, 115, 118.

³¹ *Pa. Statutes at Large*, VIII, 582-587. Cf. also *ibid*, 613, 619; III, 465; V, 507, 699, 700; VI, 610.

³² Chalmers, *Revolt of American Colonies*, II, 75, 76; *N. C. Colonial Records*, III, 95, 96; *N. Y. Col. Doc.*, V, 706, 707.

allowing the legislatures in the American colonies to pass laws by which the trade and shipping of this kingdom may be affected, either by being subjected to duties or taxes or otherwise cramped or restrained.”³³ It was in accordance with this point of view, for example, that the act of the Pennsylvania Assembly imposing a further duty of £10 upon slaves imported into the province was disallowed, as was also a similar act passed by the Virginia Assembly in 1769.³⁴ The Board of Trade, in 1706, recommended the rejection of two acts of the Pennsylvania Assembly, the one preventing the sale of ill-tanned leather and making it into shoes because “it cannot be expected that encouragements should be given by law to the making any manufactures made in England in the plantations, it being against the advantage of England”; the other requiring masters of vessels to report at Newcastle on the ground that this act dealt with a power in reference to trade which was vested by an act of Parliament in the English customs commissioners.³⁵ Another act of that colony, passed in 1715, and disallowed four years later, provided import duties upon liquors and hops. Its rejection was recommended on the ground that it “not only allows the importation of wines in general directly from the place of their growth, which is contrary to the act of trade, 15th Charles the Second, but lays a double duty on wines as may be imported from any other place, which can be only from Great Britain.”³⁶ These illustrations from one colony—by no means a complete list—covering different kinds of commercial legislation, give us some idea of the work of the Board of Trade in con-

³³ Pa. Statutes at Large, VI, 610.

³⁴ Hening, Statutes of Virginia, VIII, 337; Pa., Statutes at Large, VIII, 619, 620.

³⁵ Pa. Statutes at Large, II, 466, 480, 481.

³⁶ Ibid, III, 465. Cf. also Chalmers, Revolt of the Colonies, I, 383.

sidering colonial laws, and of the royal veto. On the whole, we must not condemn the work of the Board of Trade (and its predecessor, the committee of the privy council) for its attitude was really "one of eminent fairness." It almost never acted arbitrarily, but gave the colonies a fair chance to state their cases.³⁷

Besides the supervision of the Board of Trade, there were the instructions to the Governor which forbade him to assent to acts prejudicial to the interests of England, or required him to suspend their operation until they had been approved by the Crown. It was difficult to secure the suitable enforcement of these instructions for the Governors and other officials were dependent upon the Assembly for their salaries, and in fact the Governors frequently disregarded their instructions.³⁸ The instructions to the Governors required the legislatures to provide a permanent support, but these were not always lived up to by the legislatures.³⁹ Even the instruction requiring the Governor to suspend the operation of a law until it had secured royal approval was violated at times. Moreover, laws were not always transmitted to England for approval, or were sometimes transmitted after the purpose of the act had been in large part accomplished. This sort of passive resistance to English control could take place more readily in the corporate colonies. Many of the earlier tariff laws of Pennsylvania, for example, were transmitted to England for inspection after they had ceased to operate.⁴⁰

³⁷ Andrews, *Colonial Self-Government*, 28, 29; Chalmers, *Revolt of the American Colonies*, *passim*.

³⁸ N. Y. Col. Docs., VI, 760; V, 282, 283; VII, 32, 40; Greene, *Provincial Governor*, 164-175; Chalmers, *Revolt of the Colonies*, II, 312; *Journal of the Council of N. Y.*, I, 428.

³⁹ Pownall, *Administration of the Colonies*, I, 80, 81; Egerton, *British Colonial Policy*, 148.

⁴⁰ Pa. Statutes at Large, II, 533; III, 441, 488-492; Chalmers, *Revolt of the Colonies*, I, 385; II, 158.

England thus seems to have intended her colonies for her own benefit. Under the influence of the mercantile theory England attempted to secure the trade and navigation of the colonies to herself: she wished to make the empire self-sufficing, or if we look at the period under review as a historical evolution we may agree with Schmoller that an attempt was made at "nation-making." In order to secure an efficient colonial system—one that would redound to the English producer's gain—administrative machinery was essential to attain the suitable enforcement of the acts of Parliament, secure information of the condition and progress of the colonies, and supervise the acts of the colonial assemblies to see that they were not contrary to the acts of Parliament or harmful to English interests. This was in large measure attained by the committee of the privy council and the Board of Trade and Plantations. The administrative control was, however, weakened by an unwise division of authority and to some extent lack of attention to colonial matters.⁴¹ Moreover, the colonies themselves (particularly the chartered colonies) opposed this extension of the power of the Crown over their activities, especially in legislation. They sought to refute it in principle, and incorporated it as part of their grievances in the Declaration of Independence.

⁴¹ Pownall, *Administration of the Colonies*, I, 13 et seq.

CHAPTER II

IMPORT AND EXPORT DUTIES

With the commercial policy of England as a background we may consider that of the American colonies. In attempting an analysis of the policy of commercial legislation during the period under review, we at once meet difficulties—particularly with reference to tariff legislation. The thirteen colonies (later states) enacted legislation independently of one another—and even of the mother country as we have seen—thus making unity of action impossible. The acts providing tariff and tonnage duties (imposed principally to secure revenue) were enacted as a rule for short periods of time or for specific purposes, as for example the check placed upon the Governor by the Assembly, and thus it became difficult to establish a general policy. Moreover, the present needs of the colony were frequently so dominant that the legislation was often framed without a view to unity, or to any policy in the narrower sense.¹ Colden, writing in 1751 to Governor Clinton on means to secure revenue for regulating the Indian trade, proposed a duty on liquor. He added that “as this duty is proposed to be general over all the Colonies, it must be imposed by Act of Parliament, because it would be a most vain imagination to expect that all the Colonies would severally agree to impose it.”² The lack of unity and harmony in commercial legis-

¹ Chalmers, *Revolt of the Colonies*, II, 119; Greene *Provincial Governor*, 166 et seq.

² N. Y. Col. Doc., VI, 745, 746.

lation during the confederacy affords another illustration, at a later date, of the difficulty of a unified policy. Hence, in analyzing the policy of commercial legislation, we shall use the term in a broad sense.³

The numerous regulations of commerce render a classification desirable. It has been deemed expedient to consider the commercial legislation for the colonial period under the following heads: import and export duties; bounties, inspection laws and embargoes; tonnage duties; port regulations; and then to trace the legislation through the period of the confederacy to the time when the federal government took over the most important phases of commercial regulation.

IMPORT DUTIES.

Scope of the Import Duties. All of the colonies imposed import duties upon commodities for longer or shorter periods of time.⁴ The most continuous systems were developed in Massachusetts, New York and South Carolina. Ad valorem duties predominated at the beginning of the colonial era, but specific duties gradually supplanted them, particularly in the three colonies just mentioned and in Pennsylvania. The chief purpose of the import duty was to provide a source of revenue, yet the rates were usually low in order not to interfere with trade and navigation. Moreover, drawbacks were frequently granted, in whole or in part, upon articles which

³ Cf. Amer. Hist. Assn., III, 492.

⁴ There is no direct evidence of the imposition of such duties in the laws of Delaware subsequent to 1700. There can be little doubt, however, that the earlier acts of Pennsylvania at least were applied to Delaware. Pa. Archives, 2nd series, XVI, 546-551, 748; Pa. Col. Rec., III, 63; N. Y. Col. Docs., V, 603; Pa. Statutes at Large, II, 105; III, 112, 151, 268, 416. For some of the other colonies difficulty was experienced in securing the data for certain years; while in several other instances the acts were included in the records or compilation of laws merely by title.

had been previously imported and entered at the custom house.

Most of the colonies, if not all, imposed duties upon wines and spirituous liquors. The duties were comparatively high—in part because this commodity was a luxury for home consumption.⁵ The earlier liquor acts often specified the duties on wines from the various places of growth and production, in addition to the rates on rum and other spirituous liquors. A typical illustration of the rates upon wines and liquors may be found in the act of Massachusetts for 1692.⁶ Fayal wine was to pay 20s. per pipe; Passada wine 1£ 15s.; Madeira wine 1£ 10s.; Canary, Malaga and Sherry wines, 40s.; port wine 1£ 5s.⁷ Several of the colonies, including Connecticut, Maryland, New Jersey and Virginia, imposed the duty upon wines without regard to the places of origin—though forced to make a distinction in favor of those imported directly from England. Even higher duties were imposed upon rum and “other spirituous liquors” than upon wine.⁸ This

⁵ Malt Liquors and cider were only infrequently taxed in the earliest acts.

⁶ Acts and Resolves, I, 30.

⁷ These duties, although higher than the duties on wines in earlier acts of Massachusetts, were about the same as the rates imposed in other colonies at the beginning of the eighteenth century. The tendency to enumerate the wines in fewer groups is noticeable throughout the colonies. The first few acts of Massachusetts had no less than nine groups, but ultimately these were reduced to one. (e. g., Acts and Resolves, IV, 850.) This tendency is even more prominent in the acts imposing further duties (usually for revenue) upon wine. The administrative advantages of such a simplification must have been apparent, for it was comparatively easy under the inefficient administrative machinery, to misrepresent the place from which the wine had been imported. South Carolina, for example, experienced this difficulty and made it a misdemeanor to represent wine from the Western Islands as that of the Madeira Islands. (Cooper, Statutes, II, 609.)

⁸ Its importation into Georgia was at first prohibited, as was also the introduction of slavery. Col. Rec. of Ga., IV, 62, 121, 122; Jones, History of Ga., I, 110, 189, 427.

was particularly true of the New England colonies, though drawbacks were allowed when duly reëxported. Several of these colonies were engaged in an extensive trade with the West Indies, and found a good return cargo in the molasses produced as a by-product from the manufacture of sugar. The distillation of rum from molasses became, therefore, an extensive industry, particularly in Rhode Island.⁹ The motive of the high duties on rum in these colonies, therefore, was not solely, nor perhaps chiefly, for revenue, but the nature of the trade made it desirable to make some of the rum at least within these colonies and thus the element of protection appears. A further factor which must be noted in connection with the duties on rum is the complaint made against the excessive local consumption of rum by the colonists. Governor Andros was instructed to increase the duty upon imported rum for this reason;¹⁰ and Connecticut, in 1720, even imposed a duty of £15 upon each hogshead of rum imported, unless exported again, because it was being used too much for local consumption.¹¹ The revenue feature was probably emphasized more than any other factor in the southern colonies, which frequently imposed duties upon spirituous liquors, particularly upon rum.

The duties upon the other commodities specifically enumerated in the various acts were imposed chiefly as a source of revenue, and in general the duties were low. Many of the higher duties provided in the enactments during the middle of the eighteenth century are more apparent than real, owing to the depreciation of the currency. The acts of Massachusetts and of South Carolina are noteworthy on account of the large list of goods upon which

⁹ Bishop, *History of Manufactures*, I, 250, 270 note; N. Y. Col. Doc., VI, 127.

¹⁰ N. Y. Col. Doc., III, 268.

¹¹ Public Rec. of Conn., VIII, 224.

specific duties were imposed. In South Carolina, the number of such articles exceeded fifty in 1721, although by 1740 the number had been reduced to thirty.¹² Generally speaking, the list of goods subject to specific duties was increased or diminished quite frequently. Those most commonly selected were tobacco, sugar, cocoa, molasses, dye-woods, and later on, tea. These articles, with the addition of the impost upon rum and wine, form a list quite similar to the tariff which Congress in 1783 asked permission to impose to provide for the debt.¹³

These tariff acts almost invariably imposed ad valorem duty upon all other goods (with certain exceptions, e. g., salt, munitions of war, iron) when specific duties were imposed. The ad valorem duty seldom exceeded 5% upon the "prime" cost of the articles imported, and in one instance was as low as 4s. 6d. for every hundred pounds' worth of goods.¹⁴

Import Duties on Direct Trade. Exemption of certain articles of necessity was provided, but a more frequent practice was the imposition of lower duties upon goods imported directly into a port of the legislating colony from the place of growth or produce. This method was scarcely ever used by the southern colonies.¹⁵ Moreover, several of the colonies provided lower duties upon goods imported

¹² Hill, *Early Stages of Tariff Policy*, Amer. Econ. Assn., 1893, p. 483.

¹³ Journals of Congress, VIII, 139; Douglas, *Financial History of Mass.*, 87.

¹⁴ Acts of the General Assembly of Ga., 1755-1774, p. 242; Rec. of R. I., III, 422; Cooper, *Statutes of S. C.*, II, 649. Massachusetts, at one time, even imposed one ad valorem rate upon English goods, and another rate upon certain other goods. Acts and Resolves, I, 31. The earlier laws of New York provided a 10% duty.

¹⁵ An act of the South Carolina assembly placed a higher duty upon beer and cider not coming directly from the American colonies in 1716. It was subsequently repealed by the Proprietors, due to the boundary dispute. Cooper, *Statutes*, II, 649. Cf. also *Collection of Laws of Md. (1727)*, 157, 263.

in ships owned or built by that colony. To a considerable extent, these attempts reflected more or less closely the influences of the mercantile system though, as we shall see, England took care to disallow and to prevent the enactment of duties on English goods and ships because they interfered with her trade and navigation interests.¹⁶ As a matter of fact, little was accomplished along any of these lines by the colonial legislatures prior to 1700.

The legislation providing lower duties on direct trade (outside of that with England or with reference to colonial shipping) was intended to increase that direct trade. Cornbury, of New York, had urged the Assembly to provide such duties in 1705, though New York had had such provisions as early as 1674.¹⁷ An act of the same province in 1715 had imposed a double duty upon wine, rum and cocoa not imported directly, from place of growth or produce; and upon European goods the duty was twelve ounces of plate for every £100 value "prime cost" when imported from Boston, and eighteen and three-fourths ounces when imported from the other colonies. The representation of the Assembly to the Governor in regard to this act asserted that it "encourages a direct Importation from Britain, by which we are supplied with good

¹⁶ Cf. also Chapter I, sec. 3.

¹⁷ New York appears to have been the first to adopt the method of imposing lower duties on direct trade. The act of 1684 imposed the rather high duty of 10% *ad valorem* on European goods not coming from England, and a similar duty on goods the produce of Jamaica, Barbadoes or any other of the Caribbean Islands. The act was to be in force for eleven years, and did not apply to the trade with Newfoundland, and the Western and Madeira Islands. The 10% duty was lowered to 6% in 1699, at which time a 10% duty was imposed upon woolen manufactures from the neighboring colonies and a three-fold duty on wine and a four-fold duty on rum, not imported directly from the place of growth.—Col. Laws of N. Y., I, 165, 403. Cf. also *Journal of the Council of N. Y.*, I, 29; Osgood, *American Colonies*, II, 359.

Commodities, instead of bad, from the Plantations; and are humbly of Opinion, it is of Advantage to the British Exportation, and a small Means of encreasing their Navigation, as well as a Benefit to ourselves, we being usually supplied from the Plantations, especially the West India Islands . . .”¹⁸ Massachusetts provided a similar law in 1715, emphasizing however the revenue feature. By that act, continued with subsequent additions and qualifications for more than fifty years, double duties were imposed on wine, rum, sugar, molasses, tobacco and logwood not imported directly from the place of growth or produce.¹⁹

A more important phase of lower duties upon articles imported directly from the place of growth or produce is to be found in the laws favoring the shipping of the legislating colony. Five colonies, at least, attempted to encourage the shipping industry or their direct trade by this

¹⁸ Journal of the Council of N. Y., I, 435. European goods from England were not subject to this duty.—Ibid, 436; Col. Laws of N. Y., I, 847. Cf. also the act of 1714, *ibid*, I, 812.

¹⁹ Acts and Resolves, II, 11, 48, 76, etc.; III, 81, 184, 271, etc.; IV, 79, 182, 298, etc. The later acts exempted goods from Great Britain, but goods imported (with exceptions) in any colonial or British West Indian vessel not the growth or produce of that colony, were liable to these double duties.

Among the more important acts of this character in other colonies may be mentioned the higher duties on liquors provided in 1743 by New Jersey. Rum paid 1s. per gallon when not imported directly; wine from any other of the American colonies, not the growth of that colony, £4 per pipe.—Allinson, *Acts of the Assembly*, 125. Pennsylvania, in 1700, and subsequently, had provided much higher duties on wine and rum not imported directly from the place of growth or produce, although this was a comparatively unimportant feature in some of these acts.—Pa. Statutes at Large, II, 105; III, 151, 268. The act of 1715 imposed double duties upon wine and rum not imported directly from the place of growth or produce, but it was disallowed by the Crown because the act permitted the importation of wines contrary to the act of 15 Charles II, and also laid a double duty “on such wines as may be imported from any other place, which can be only from Great Britain.”—*Ibid*, III, 112, 465.

means. Revenue was, of course, the basis of all these instances, although its importance varied widely. Passed during the latter part of the seventeenth and the early part of the eighteenth centuries, these acts provided lower duties chiefly upon wines and rum. Pennsylvania had provided in 1723 for the free importation of molasses in ships built in the province;²⁰ Connecticut wished to encourage trade with the neighboring colonies of New England, New York, New Jersey, and Pennsylvania in 1747, by providing lower duties on goods imported from thence by her own inhabitants;²¹ and South Carolina had comparatively elaborate provisions to encourage ship building and trade.²² During the proprietary period two acts were passed, the act of 1703 providing that vessels built and owned in the colony should pay half of the regular import and export duties, and that those built elsewhere, but owned in the province should pay two-thirds of these duties. The act of 1717 exempted from all duties goods imported in vessels built and owned in the colony; furthermore, on goods imported in vessels built, but not owned in the colony, the duties were one-half; and upon goods in vessels owned, though not built in the colony, three-fourths. The proprietors of the colony repealed the act in 1719, because it discriminated against British shipping, but this action was not taken until the Board of Trade had declared the act contrary to English interests. An attempt was made that same year to meet the objection, by providing freedom from duties on vessels built and owned in

²⁰ Pa. Statutes at Large, III, 363.

²¹ The duties on all goods imported amount to 5% of their value when imported by her own inhabitants, and 7½% when imported by non-residents.—Public Rec. of Conn., IX, 283. It is worthy of note that a premium of 5% was offered at the same time on goods imported by her inhabitants directly from England and Ireland,—a provision which gave some results.—*Ibid*, 285, 393.

²² Cf. also Pa. Statutes at Large, II, 285.

the province, and half duties on vessels built, but not owned, or owned but not built in the colony. To this the proprietors also refused assent. Nevertheless, it was continued in force until the act of 1721, when an essentially similar provision was enacted—vessels owned and built in the province paying half duties, the other two classes three-fourths.²³ Though encouragement to home shipping was an important feature of these acts, the controlling factor was the need for revenue, the tariff acts of this province producing a large source of revenue.²⁴

The acts of the colonies imposing lower duties on rum and wine to encourage shipbuilding, and direct trade are found chiefly in the second decade of the eighteenth century,²⁵ which would seem to indicate that the colonies having these duties—Connecticut, Pennsylvania, Maryland, Virginia and South Carolina—were influenced to some extent by their neighbors.²⁶

²³ Cooper, Statutes of S. C., II, 200; III, 32, 67; Carroll, Collections of S. C., II, 150, 151, 154, 168.

²⁴ Smith, South Carolina, 287, 288; Carroll, Collections of S. C., II, 222, 223, 228 et seq.

²⁵ Virginia in 1684 provided a duty of 3d. per gallon on liquors, but exempted importations in vessels belonging to the inhabitants. When it was proposed, in 1691, to secure a larger part of the revenue from indirect taxation, the duty on liquors was increased to 4d. per gallon (except from England), 2d. per gallon imported in vessels owned by the inhabitants, and free from any duty in vessels built in the colony. It was re-enacted four years later. The amendment in the act of 1730 provided for the payment of half of the duties on liquors imported in vessels owned by the inhabitants of the colony. The chief emphasis in practically all of Virginia's acts imposing duties on liquors was for revenue. The earlier acts produced about £600 per annum on the average, and probably as much during the eighteenth century prior to the Revolution.—Hening, Statutes, III, 23, 88, 129; Ripley, Financial History of Virginia, 69-72.

²⁶ The most important of these acts were imposed by Connecticut and Pennsylvania. In 1717 high duties were imposed by the former upon wine and rum—30s. per pipe of wine and 50s. per hogshead of rum. The duties, however, were fixed at 15s. and 20s. respectively if they were imported directly from their place of growth

English Goods and Imposts Thereon. Incidentally we have touched upon the colonial legislation affecting English ships and goods imported from England. By the British acts of trade and navigation goods imported from England were regarded as part of the direct trade of the colonies, and exempt from any colonial duties, or at least from any higher duties than those imposed on goods imported from other places of growth or produce. The same

or produce, in vessels "part owned by one or more inhabitants" of the colony. Four years later, the duties on rum were made comparatively less favorable for inhabitants importing this commodity in their own vessels directly from the West Indies. The duties imposed by this act were 4d. and 3d. per gallon of rum.—Public Rec. of Conn., VII, 36, 282.—An act of 1735, repealed the same year, increased the rates to 16d. and 8d. per gallon of rum. The lower rate was paid on the importation of rum directly from the West Indies in a vessel "the major part whereof" was owned by inhabitants of the colony.—Ibid, VIII, 7. In Pennsylvania direct importation of wine in vessels owned principally by inhabitants of the colony or of Delaware was subject to a duty of 20s. per pipe, and to £3 when not so owned. Moreover, the duty was £6 when imported indirectly. On rum the duty was 1d. per gallon when imported in vessels owned principally in the colony, otherwise 6d. The act of 1706, placed the duty on wine not imported directly (except from England) at £4 per pipe, and on direct importations in vessels owned by the inhabitants of Pennsylvania, Delaware and West Jersey at 20s.; on rum and other spirits not directly from the West Indies in vessels owned as in the case of the importation of wine, the duty was 9d. per gallon. Brandy from England was exempted from this duty. This act expired by limitation, nor was it disallowed by the Crown. It was replaced by an act passed in 1711, which provided that wine not imported directly from the place of growth or produce, should pay 40s. per pipe, and rum 4d. per gallon; when imported directly from the place of growth or produce, but not in the vessels of the inhabitants of Pennsylvania, Delaware or West Jersey, half rates were provided, and entire exemption granted when imported in these vessels. This act was disallowed by the Crown, February 20, 1714. The next act (1718), apparently, never submitted to the consideration of the Crown, and continued in 1721, imposed a duty of 20s. per pipe of Madeira and £3 for every pipe of Fayal wine imported directly in vessels owned by the inhabitants of the province, 40s. and £3 respectively if imported directly by others, and £5 if not imported directly from place of growth or produce.

view was held by English legislative and administrative bodies with regard to English ships.²⁷ As a matter of fact, numerous laws violating these principles were passed by the colonies. The English merchants protested from time to time and even proposed methods for remedying this evil in the corporate colonies which were the colonies in which most of the violations took place. Stephen Goden, a British merchant, asked the Board of Trade in 1716 to revoke the charters of those colonies whose assemblies passed laws repugnant to the laws of England in violation of their charters. He asked, "What can be more repugnant to (the constitution and advantage of Britain) than to burden, by unequal taxes, the manufactures and shipping of this kingdom, whose traders they call strangers in respect of their own? Thus, in Carolina, and in Pennsylvania, wines of Madeira pay in the first double, and in the last much more than if they belonged to the livers in both; and the like impositions are laid upon vessels that are not built in these places, to encourage their own; thus British traders are treated as aliens in their own colonies; a duty is likewise laid upon the importation of English manufactures, to promote their own."

On rum and other spirits imported directly from place of produce by non-inhabitants, the rates were 2d. per gallon, and 4d. when not imported directly by any one. A new revenue measure in 1722 continued the duties on wine unchanged, but increased those on rum. No mention was made of importation in vessels owned by the inhabitants of the province. Molasses was by act of 1723 admitted duty free when imported in ships built in the province, but the expectation of promoting commerce was not realized and it was repealed the same year. Neither of these two acts seems to have been submitted to the Crown.—Pa. Statutes at Large, II, 105, 284, 382, 543, 544, 551, 552; III, 150, 238, 268, 363, 416. Maryland, in 1724, reenacted the duties on wines and distilled liquors imported into the province and exempted the vessels owned by residents from these duties.—Bacon, Laws of Md., ch. 10.

²⁷ Edward Randolph (publications of the Prince Society), III, 97-99; Chalmers, Revolt of the Colonies, I, 388; N. Y. Col. Doc., VI, 34.

The Board of Trade, upon considering the matter, secured a royal order prohibiting governors from assenting to bills affecting English trade and shipping, and suspending their operation until approved by the Crown.²⁸

That these violations were not necessarily enacted in opposition to the interests of the English merchant, as implied by Chalmers,²⁹ but were rather expedients to secure revenue with the least burden to the merchants of the legislating colony, seems evident. In 1695 Governor Usher, of New Hampshire, was requested by the Assembly, to devise a method to raise revenue for the support of the government. In addition to export duties on lumber and import duties on liquors, he proposed a duty on English goods similar to that imposed by Massachusetts.³⁰ The acts of the latter colony provided for a duty of 10s. per £100 value of English goods, and upon other goods not otherwise provided for in this act, a duty of 1d. per 20s. value—a higher rate. Subsequent acts doubled the duty on English goods, but after the receipt of the additional instruction by the Governor in 1718, all reference to English goods and English vessels was omitted from the annual tariff laws passed by that colony. When a new revenue bill came up in the Assembly, after this instruction to the Governor had been made known, the objectionable provisions were retained. An acrimonious discussion thereupon took place between the Assembly and the Council, in which the former was willing merely to substitute the word European for English. The mediation of the Governor, however, had a good effect, and a new bill, eliminating the controverted clause, was passed. The Assem-

²⁸ Chalmers, *Revolt of the Colonies*, II, 6, 7, 118–120; *Journal of the Council of N. Y.*, I, 428, 429; Edward Randolph (publication of the Prince Society), IV, 272, 273.

²⁹ Chalmers, *Revolt of the Colonies* (see previous note), 32–34.

³⁰ *N. H. Provincial Papers*, II, 172, 173; III, 34–36; q. v. also Batchellor, *Laws of N. H.*, I, 109.

bly, nevertheless, passed a resolution, censuring the council. The latter body replied, asserting in part that it "apprehended the duty of one per cent on English goods affected the trade of Great Britain, and so came within the meaning of His Majesty's late additional instruction."³¹ Probably the most notable instance that occurred in any of the colonies along this line was the imposition of a series of duties by the Assembly of New York. In 1718, Governor Hunter in a letter to the Board of Trade, urged the necessity of securing revenue by a two per cent duty on European goods, which would not hurt English trade for it would "in reality (be) paid by the inhabitants & purchasers themselves."³² As a matter of fact, similar acts, imposing even higher duties, had been regularly passed by the Assembly and were not disallowed by the Crown.³³ An act prohibiting a two per cent duty was passed in 1720, with a clause suspending its operation until it had been approved by the Crown.³⁴ The bill did not receive royal approval, for objections had been urged against it in a petition by English merchants. The Privy Council further urged the preparation of instructions to all of the colonial Governors in America to enjoin them from assenting upon any pretense whatsoever to any act imposing duties on European goods shipped in English vessels.³⁵ This colony, as well

³¹ Acts and Resolves of Mass., II, 31, 200, 270, etc.; III, 76, 108, 138; Hutchinson, History of Mass., II, 204-208. The act of 1716 imposing a duty on English ships trading to the colony was disallowed; and for assenting to the act of 1718, of a similar tenor (before he had received his additional instruction), the Governor was reprimanded.—Chalmers, Revolt of the Colonies, II, 13, 14; Hutchinson, History of Mass., II, 209; Journal of the Council of N. Y., I, 430, 433.

³² N. Y. Col. Doc., V, 520.

³³ N. Y. Col. Doc., III, 317; V, 512, 643; Chalmers, Revolt of the Colonies, II, 49; Osgood, American Colonies, II, 359, 360.

³⁴ Col. Laws of N. Y., II, 32.

³⁵ N. Y. Col. Doc., V, 683, 706, 707; Journals of the Council of

as others, still imposed duties at various times, (especially on negro slaves) which were considered to be contrary to English interests.³⁶

These practices were by no means restricted to the instances already mentioned; they also extended beyond the early decades of the eighteenth century, and covered ships and slaves as well as goods. In an investigation made by the Board of Trade in 1731 it was discovered that the colonies imposed lower duties "on their own effects" than upon those of residents of England.³⁷ In 1757 Connecticut imposed a duty of 6d. per pound of tea and an ad valorem duty of five per cent upon other goods imported by non-residents of the colony. There is no evidence that the act was intended to exempt English goods, but a similar law passed eleven years later (imposing the five per cent ad valorem duty) met with opposition in England,—both by merchants and by the government,—and it was accordingly repealed. The agent representing Connecticut in London prevailed upon Lord Hillsborough not to lay the complaint against this act before the King in council, with the understanding that the Assembly would correct the bill so as not to affect the importation of English goods by English subjects.³⁸

N. Y., I, 516; cf. statement in Chalmers, *Revolt of the Colonies*, II, 49. Governor Burnet, in 1722, attributed the delay to the confirmation of this act, which he believed would never be approved, to the circumstance that "When the Legislature at home have passed a Law to give a premium upon the Exportation of the British Manufactures It is scarce to be Expected that the Crown will consent to a duty on those very Manufactures when Imported into the Plantations."—*Journal of the Council of N. Y.*, I, 479.

³⁶ Cf. *N. Y. Col. Doc.*, VI, 33, 34. An act passed in 1726 imposed a 5% duty on European and East India goods imported by way of the British West Indies.—*Col. Laws of N. Y.*, II, 254; *N. Y. Col. Doc.*, VI, 33–34.

³⁷ Chalmers, *Revolt of the Colonies*, II, 118; Kimball, *Corres. of Col. Gov. of R. I.*, I, 72, 73.

³⁸ *Public Rec. of Conn.*, XI, 10; XIII, 72, 299; *Mass. Hist. Coll.*,

The action of the Board of Trade and the instructions to the Governors practically broke up the attempts to make European goods and ships pay part of the expenses of the government through imposts, because such acts were considered detrimental to English interests, if not contrary to the parliamentary acts of trade and navigation. This question is further exemplified in the attitude towards the colonial laws imposing duties on negro slaves.³⁹

*Import Duties on Negro Slaves.*⁴⁰ The institution of slavery was of economic significance to northern and southern colonies, and the importation of slaves was regulated in practically all of the colonies.⁴¹ Slaves were considered as merchandise under the navigation acts,⁴² and duties were imposed upon them as a source of revenue, though the motive of checking undue importation was also strong. The motives for the acts of the several colonies were further subject to restraints by the home govern-

fifth series, IX, 387, 392, 419, 423. Cf. Public Rec. of Conn., VII, 55, 56. The reply of the agent is worth quoting in part. "I have very cautiously avoided giving any assurances that any alteration at all would be made in it (the act of 1768), and only contended that justice and propriety required that opportunity should be given for it, if the General Assembly of the Colony should upon reconsideration think proper to do it; to whom also it must be referred, and who I had no doubt would do what was wise and fit with regard to it."—Mass. Hist. Coll., fifth series, IX, 428, 429.

³⁹ Egerton, *British Col. Policy*, 140; N. Y. Col. Doc., VI, 33, 34; Carroll, *Historical Coll. of S. C.*, II, 222. Franklin, writing in 1754, asserted that "we are not suffered to regulate our trade and restrain the importation and consumption of British superfluities, as Britain can the consumption of foreign superfluities."—Works (Bigelow ed.), II, 382.

⁴⁰ An excellent monograph, including this topic, is *The Suppression of the African Slave-Trade to the United States of America, 1638-1870*, by W. E. B. DuBois. See especially pp. 7-38, and appendix A. containing an outline of colonial and state legislation (1641-1787) on the importation of negro slaves.

⁴¹ New Hampshire was probably the only exception.—Cf. N. H. Province Papers, IV, 617.

⁴² McCrady, *History of South Carolina*, I, 441.

ment. Governors not infrequently had a clause in their instructions emphasizing the due encouragement of the slave trade, especially in the interests of the Royal Africa Company.⁴³ Moreover, additional instructions were at times sent to Governors requiring them to suspend the operation of acts affecting this trade until confirmed by the Crown. The additional instruction was usually the outcome of a duty on negroes imported from Africa, which led to complaints and petitions to the Board of Trade by English merchants.⁴⁴ The Board recommended the rejection of colonial acts of this nature when there was evidence that the importer (often an English merchant) had to pay the duty imposed, or when lower duties were paid by the merchants of the legislating colony.⁴⁵

There is by no means any general unity in the colonial legislation on the imposition of duties on slaves. Until about the time when England began to enforce the colonial system the several laws varied from encouragement to prohibition. The latter tendency became stronger subsequent to that period. The New England colonies found comparatively slight use for slaves on account of the poverty of their soil. Their views were also somewhat influenced by moral standards. The share of the New Englander, especially of the merchants of Rhode Island, in the slave-carrying trade, however, shows that the economic factors were after all predominant. Likewise, in the middle

⁴³ N. Y. Col. Doc., III, 374; N. J. Archives, first series, IX, 52; Laws of N. H., 164, 628.

⁴⁴ N. Y. Col. Doc., VI, 33, 34, 791; Kimball, *Corres. of Gov. of R. I.*, I, 64, 73.

⁴⁵ N. J. Archives, first series, IX, 447; N. Y. Col. Doc., VI, 34. In a circular letter of October 14, 1729, the Governors of the colonies were instructed to use their influence to procure revenue from other sources than upon the importation of negroes.—Ripley, *Financial history of Vir.*, 76. The Asiento agreement between England and Spain also illustrates the importance of the African slave trade to English merchants.

colonies, there was small chance for the growth of the institution of slavery, because such a system, economically considered, did not pay. It is true that in Pennsylvania, the moral aspect was quite pronounced; it was probably less potent than the economic causes. By 1778 the importation of slaves had practically ceased in the northern states and in Maryland. In the southern colonies alone, where there was more legislation regulating the importation of slaves, were the economic factors (soil, climate, agricultural conditions and plantations) favorable to the institution of slavery. Moral forces, as in the attempt on the part of the trustees of Georgia to prohibit the introduction of slavery into that colony, and political forces, as expressed in laws checking the importation of slaves in such numbers as to menace the tranquillity and safety of the inhabitants, were also of some importance, nevertheless they were subordinate to the economic forces.⁴⁶

The duties actually imposed varied widely, going to a maximum of £100 on slaves imported into South Carolina from Africa, and £150 from the colonies—duties which were practically prohibitive.⁴⁷ In general, however, the rates did not often exceed £10 per slave imported, with drawbacks when duly exported.⁴⁸ The actual rates were the result of motives of expediency—sometimes political or moral, but more often economic. The fiscal needs in most of the colonies found in the slave trade a convenient

⁴⁶ DuBois, *Suppression of Slave-Trade*, 15, 25, 37, 51; *Col. Rec. of Ga.*, I, 50–54, 56–62; *Journal of the Council of N. Y.*, I, 434, 631; *Pa. Archives*, fourth series, III, 343; *Carroll, Historical Coll. of S. C.*, II, 218, 219, 224, 480.

⁴⁷ *Cooper, Statutes*, III, 556; *Carroll, Historical Coll. of S. C.*, II, 224.

⁴⁸ Several colonies, at various times, prohibited the importation of negro slaves. South Carolina passed several acts imposing duties higher than £10, especially on slaves not imported directly from Africa.—*Cooper, Statutes*, of S. C., II, 649; III, 56, 193; IV, 187; VII, 368.

and in some instances an important source of revenue.⁴⁹ We have seen already that acts imposing this duty upon the importer were disallowed by the Crown, because the incidence of the tax was believed to fall upon him and was therefore detrimental to English merchants engaged in this trade. Hence colonial acts thereafter frequently provided that the duty should be paid by the first purchasers.⁵⁰

A brief survey of the legislation of New York will not be amiss at this place by way of illustration, though in this colony the economic motives were not so strong as in the southern colonies.⁵¹ Her first act provided, as a revenue measure, a duty of 30s. on negro and Indian slaves not imported directly "from their own countries," and half that amount if imported directly. The act was probably disallowed by the Crown the following year.⁵² In 1709 the duty on slaves not imported directly from Africa was £3. It also was a revenue measure.⁵³ A new principle was introduced in 1714 by an act providing that slaves imported directly from Africa in vessels owned by the inhabitants in the colony were to pay seven and a half ounces of plate, otherwise the duty was ten ounces whether from Africa, the West Indies or the neighboring colonies. Two years later the rates were five and ten

⁴⁹ N. Y. Col. Doc., VII, 907; VIII, 452; Votes of the Assembly of Pa., II, 251, 269, 331; III, 18, 160, 346, etc.; Ripley, *Financial History of Virginia*, 73-78; Hill, *Stages of Tariff Policy*, 27-30.

⁵⁰ See, e. g., Cooper, *Statutes of S. C.*, IV, 187; Hening, *Statutes of Vir.*, IV, 318; V, 92; VI, 218.

⁵¹ For a view of the legislation in each colony, see DuBois, cited above.

⁵² Duties were occasionally imposed in earlier acts upon Indian slaves, but the commercial importance of this factor is practically negligible.—Col. Laws of N. Y., I, 484; N. Y. Col. Doc., IV, 1066.

⁵³ Col. Laws of N. Y., I, 675; N. Y. Col. Doc., V, 178, 185, 293; *Journal of the Council of N. Y.*, I, 288. The act was continued in 1710 and 1711.—Col. Laws of N. Y., I, 714, 736.

ounces respectively. Revenue and the political effects of the negro plot of 1711 were important factors in shaping this bill. The desire to encourage direct importation from Africa was also an end which these acts had in view; England, however, objected to this feature and the Assembly provided that negroes imported in English vessels should not pay higher duties than those paid on negroes imported in vessels of the inhabitants of New York.⁵⁴ The later acts of this colony, like many of the acts of other colonies, sought to discriminate between direct importations from Africa as opposed to importations from the plantations. The rates were 40s. and £4 respectively. At various times the economic value of slaves was considered, as for example in the address of Governor Cosby to the Assembly in which he expected the "greatest evill" to ensue from too great an importation of slaves.⁵⁵ Although revenue was perhaps the chief purpose of the duty on slaves imported into New York, the amount realized at the time of the Revolution was not important.⁵⁶

The tendency of the legislation of the colonies from the decade before the Revolution until the constitutional convention was strongly toward restriction or total prohibition of the slave trade to these colonies.⁵⁷ The action of the Assembly, at the outbreak of the Revolution was

⁵⁴ Col. Laws of N. Y., I, 803, 899, 1012; Journal of the Council of N. Y., I, 433, 434, 436; N. Y. Col. Doc., V, 927, 928.

⁵⁵ Col. Laws of N. Y., II, 254, 430, 772, 1048; III, 31, 87, 151, etc. The act was continued by annual grants to the Revolution. Journal of the Council of N. Y., I, 631; II, 1912, 1974. A petition by merchants from Bristol led to the rejection of the act by the Crown in 1735, and in an additional instruction to the Governor it was stated that the duty on slaves should not be payable by the importer.—N. Y. Col. Doc., VI, 32-34, 37, 38. The subsequent acts did not follow these instructions.

⁵⁶ N. Y. Col. Doc., V, 814; VIII, 447, 453.

⁵⁷ DuBois, Suppression of the Slave Trade, 39, 41; Force, American Archives, *passim*.

The period from the Revolution to the constitutional convention

chiefly a war measure, yet underlying its action on the slave-trade clause were economic and moral, as well as political motives. Its reception in several of the colonies or states was by no means cordial.⁵⁸

*Free Trade and the Importation of Goods.*⁵⁹ The colonies were dependent upon trade with England, the plantations or certain markets permitted by parliamentary acts. It is difficult, if not impossible, to determine with any degree of precision the strength of a free trade movement in the several colonies. Most of them, as we have seen, imposed tariff duties to secure revenue; ⁶⁰ their acts concerning English goods and ships, when entire freedom from duties was granted, was due chiefly to the complaints of English merchants, and the exercise of the prerogative by the Crown. The policy of permitting drawbacks on goods duly reexported is evidence of the desire to encourage trade and navigation. Most of the colonies were, as a matter of fact, under the régime of free trade for short periods of time, although such a condition was probably as often accidental as it was premeditated.

With the exception of Massachusetts, free trade was predominant in most commodities (if not all) in the New England colonies.⁶¹ New Hampshire seems to have settled on the policy of free trade after 1722, for from that

witnessed the extension of this tendency in formal enactments or in constitutional provisions.

⁵⁸ DuBois, *Suppression of the Slave Trade*, 41-47; MacDonald, *Select Documents*.

⁵⁹ The term "free trade" is not used here in antithesis to protection, but to a tariff for revenue, which was the declared object of most of the tariff acts during the colonial period. The term also embodies the restrictions of the parliamentary acts of trade and navigation, unless otherwise stated.

⁶⁰ See, e. g., the letter of Governor Johnson of South Carolina, in 1708, to the Board of Trade, cited in McCrady, *South Carolina*, I, 479; *N. H. Province Papers*, III, 34-36.

⁶¹ Massachusetts even exempted the products of New England, as well as certain other commodities from time to time, from import

time to the Revolution she had practically no tariff system.⁶² Connecticut and Rhode Island did not have much of a tariff. Both provided ad valorem duties at times on goods brought in by transient traders or non-inhabitants. In addition, Connecticut had an almost continuous series of acts imposing duties on liquors, and also provided a duty on tea in 1757.⁶³ Rhode Island placed duties on negroes imported into the colony, and an occasional impost on goods from the neighboring colonies in the interests of her trade.⁶⁴ The emphasis on direct taxation in the New England colonies as well as the activity of the New England merchant in trade doubtless influenced the Assemblies in their attitude toward the imposition of duties on articles of commerce.⁶⁵

In the middle colonies, New York had a continuous tariff system for almost a century prior to the Revolution where emphasis was placed upon duties as a source of revenue. The Assembly of New York experienced some difficulty in 1708 in securing revenue, by means of tariff duties, because of the hindrance to trade, "which if continued, will unavoidably prove the Ruin of the Colony."⁶⁶

duties subsequent to 1692.—Acts and Resolves, I, 31, 269, 343, etc.; II, 11, 48, 75, etc.; III, 81, 184, etc.

⁶² Thus Robinson asserts that such a policy existed "from 1722 to the Revolution, when freedom of trade represented the settled policy of the province, and the attempts to secure revenue from imported liquors were temporary in their nature, and may be regarded as expedients to which the province resorted to relieve some pressing temporary necessity."—History of Taxation in N. H., in Amer. Econ. Assn., Series 3, vol. III, 64, 65.

⁶³ Public Rec. of Conn., IV, 249; VI, 36, 224, etc.; XI, 10; XIII, 72, 299; N. Y. Col. Doc.; III, 798; IV, 37.

⁶⁴ Kimball, Corres. of Governors of R. I., I, 73; Col. Rec. of R. I., III, 422; IV, 423, 450, 454.

⁶⁵ Public Rec. of Conn., X, 624; Robinson, History of Taxation in N. H., chap. III; Mead, Conn. as a Corporate Colony, 28, 32; Os-good, American Colonies, I, 477.

⁶⁶ Journal of the Council of N. Y., I, 435. In 1755, in calling for

It was exceptional indeed for New Jersey to impose duties on imports. One or two acts imposing duties on rum and negroes, in addition to export duties, constitute the entire range of her activities. At the outset this colony was anxious to promote trade and sought to establish a free port at Perth Amboy. Complaints were made by the Governor of New York; for such a port "must certainly destroy" the trade of New York. As a non-commercial colony, however, New Jersey should not receive too much emphasis for her free trade attitude.⁶⁷ The assembly of Delaware did not impose any duties on goods, but there is evidence to show that those imposed by Pennsylvania, at any rate the earlier ones, extended also to the three "lower counties."⁶⁸ It also was a non-commercial colony. The acts of the Pennsylvania Assembly are continuous to 1723, after which date further duties were imposed on negroes. To secure revenue in 1758, a duty on spirits and sugar, as well as upon tonnage, was proposed. At the second reading of the bill, all of the council "were of opinion that Trade should be the last thing Taxed; that an exemption from Duties and the Freedom of the Port had more than anything contributed to the increase of our Trade, and they were afraid this would divert it."⁶⁹ A petition from merchants of Philadelphia considered the means of

more revenue, the Governor said to the members of the Assembly, "I shall only recommend to you to avoid as much as possible the laying any further Impositions on Trade, upon the Encouragement of which the Prosperity of every trading Country principally depends."—*Ibid*, II, 1223. New York had duties from 1665 by English authority, but these duties were not passed by an Assembly until after its constitution in 1683.—*Ibid*, VIII et seq.; N. Y. Col. Doc., III, 289.

⁶⁷ N. Y. Col. Doc., III, 798; IV, 37; N. J. Archives, 1st series, 227, 231, 238, 252, 405.

⁶⁸ Cf. note 3.

⁶⁹ Col. Rec. of Pa., VIII, 30, 31; also quoted by Hill, *Stages of Tariff Policy*, Amer. Econ. Assn., 1893, 36.

securing the revenue as "unequal and burdensome to a few." Upon reconsideration the bill was finally passed.⁷⁰

In matters of trade the southern colonies had a problem different from that of the northern colonies. They had comparatively little shipping of their own, hence their staples and return cargoes were carried chiefly by English and New England ship-masters. Then, too, their fiscal systems necessitated greater dependence on indirect taxes perhaps than was the case in the northern colonies. Nevertheless, no elaborate tariff system is found in any of the southern colonies except in South Carolina.⁷¹ Virginia established free trade in 1644. Owing to the opposition to the commonwealth in England, Virginia was forced to surrender to an English commission. By the terms of the surrender, freedom of trade was accorded "as the people of England do enjoy to all places and with all nations according to the lawes of that commonwealth." Moreover, it was declared that Virginia should be free from all taxes, customs and impositions except those levied under the authority of its assemblies.⁷² The first import duty was passed in 1661, providing a duty of 6d. per gallon on rum and 1d. per pound on sugar. It was repealed shortly after, chiefly because of "the obstructions it may bring to the trade of the country." The report of Governor Berkeley in 1671 stated that there were no import duties, and indeed none was provided until the duty on liquors in 1684 sought to lessen the burdens of direct taxation.⁷³ Subsequent to

⁷⁰ The incidence of this tax is presented in the petition.—Votes of the Assembly of Pa., V, 9, 10; Pa. Archives, 4th series, II, 963; Pa. Statutes at Large, V, 352, 409.

⁷¹ The tariff acts of South Carolina were as important as those of New York or Massachusetts. Exemptions were granted at times, as in the act of 1720 which excepted certain provisions from the other colonies from a 5% impost.—Cooper, Statutes of S. C., III, 115; Carroll, Historical Coll. of S. C., II, 259.

⁷² Hening, Statutes of Vir., I, 296, 363-367.

⁷³ Ibid., II, 128, 212, 516; III, 23.

that period, import duties were regularly imposed, chiefly on liquors and negroes. Free trade tendencies were not perceptible in the other southern colonies.

Retaliatory Acts. The colonies did not often find it necessary to impose discriminating or retaliatory duties upon goods from neighboring colonies. In practically every case of retaliation, the reason can be traced to a boundary dispute.⁷⁴ The retaliatory acts thus assume a form of commercial coercion.

Maryland's boundary dispute with Pennsylvania was at the basis of the 9d. per gallon duty on liquors imported from the latter colony, though the duty when imported from other places was 3d. Enacted in 1704, this duty was continued for twenty years. Maryland also prohibited the importation of tobacco, provisions, beer, malt and horses from Pennsylvania "and the territories thereto belonging."⁷⁵ Maryland also had a boundary dispute with Virginia which brought about discriminating legislation and embargoes.⁷⁶

Probably the most serious retaliatory act, had it been carried into effect, was the act passed in 1721 by Massa-

⁷⁴ In their efforts to encourage the direct trade of the colony, higher duties were occasionally imposed on goods coming by land (i. e., from a neighboring colony) rather than by sea. Some of these acts were also intended chiefly to safeguard the interest of the inhabitants, as in the act of North Carolina in 1751, imposing a duty on rum from its southern neighbor.—State Rec. of N. C., XXIII, 363.

⁷⁵ Bacon, Laws of Md., 1704, ch. 30 and 43; 1715, ch. 36; Pa. Archives, 2d series, XVI, contains the bills filed in chancery in 1735 and 1736 for the plaintiffs in the boundary question; Archives of Md., Proceedings of Assembly, 1707-1710, 483, 505, 574; *ibid*, Proceedings of the Council, 1698-1731, *passim*. Cf. also Pa. Statutes at Large, III, 145-150; Col. Rec. of Pa., II, 611; III, 38,—providing that "a duty be laid on goods imported from New York & Province adjacent, equivalent to what they have laid on ours."

⁷⁶ Elliott, Tariff Controversy, Leland Stanford Jr., Univ. Monographs, 1892, 17.

chusetts.⁷⁷ The preamble of the act states that the province of New Hampshire had exacted a duty of 2s. per thousand upon lumber "brought down the river, commonly called Piscataqua River, and transported into this province (though the trees out of which the boards are made, grow upon lands within this province, and are cut at mills in the county of York. . . ." On the other hand, it is asserted that the export duty on timber, as well as prohibitive duties upon wines and liquors except from place of growth and produce, were only prepared in the form of a bill in the New Hampshire house, and that the bill was actually rejected by the council.⁷⁸ The New Hampshire bill, as passed, provided the usual duties on wines and liquors and added an export duty of 12d. per quintal of fish unless exported to "foreign parts." Massachusetts considered the action of New Hampshire "unjust and oppressive," and in retaliation imposed both import and export duties on goods in the trade with the latter colony.⁷⁹ The acts of both provinces were probably repealed by the following year.⁸⁰

Drawbacks. Little, if any, uniformity existed as to the amount of the drawback on goods brought into the several colonies. Drawbacks were rarely granted in the earlier

⁷⁷ Acts and Resolves, II, 230.

⁷⁸ For details and further references see Robinson, History of Taxation in N. H., 60-63.

⁷⁹ The duties were as follows: £5 per hogshead of rum, £5 per pipe of wine, and 10% on all other goods from New Hampshire; while the export duties were 10s. per barrel of beef or pork, 5s. per cwt. of bread, 1s. per bushel of wheat, 6d. per bushel of Indian corn, and 10% ad valorem on all other goods. This was one of the few acts in which Massachusetts imposed duties on exports.

⁸⁰ Almost a century previously, Massachusetts had imposed heavy duties on goods from Plymouth, Connecticut and New Hampshire, because of a dispute concerning the maintenance of a fort.—Mass. Rec., II, 182, 183, 269, 270; Public Rec. of Conn., I, 119, 120, 170. Cf. also the dispute between New York and Massachusetts.—N. Y. Col. Doc., III, 241, 242.

acts, but were often granted in the eighteenth century, on liquors and negro slaves. This was especially true of Connecticut, Rhode Island and Virginia. The reason for the drawback was the encouragement of trade. This was particularly true of the northern colonies which were also the shipping colonies. Thus an act of Massachusetts, passed in 1668, permitted one-half of the duty to be refunded, although no time limit was placed upon the reexportation of the goods. The act of 1692 provided a drawback of two-thirds of the duty on liquors and other goods reexported within nine months after importation. The prevailing amount of the drawback in South Carolina and Pennsylvania was three-fourths of the duty.⁸¹

EXPORT DUTIES.

Scope of the Export Duties. The export duties were not nearly so important in the commercial legislation of the colonial period as the import duties. Possible exceptions to this general statement might include Connecticut, New Jersey, Maryland and Virginia, especially the last three. Rhode Island and Delaware did not enact laws imposing duties upon exports; while several of the colonies enacted only one or two laws of such a nature. Furthermore, in viewing the colonial period as a whole, we find that export duties were not imposed by any of the New England or middle colonies (except New York) after 1750. They were of more importance in the southern colonies, although North Carolina and Georgia did not rely upon them to any extent for purposes of revenue.

These duties were imposed upon a large variety of ar-

⁸¹ Journal of the Council of N. Y., I, 9; Whitmore, Col. Laws of Mass. (1887), 69; Acts and Resolves of Mass., I, 31, 208; American Historical Ass'n, III, 228, 229. Pa., Statutes at Large, IV, 115, 154, 272; Cooper, Statutes of South Carolina, II, 656; III, 56, 159, 556; Batchellor, Laws of N. H., I, 527.

ticles at various times, but since their purpose was primarily for revenue, tobacco, skins and furs, and lumber, were the principal objects taxed.

Purpose of the Export Duties. The chief purpose of the duty on exports was to obtain revenue. In only a few instances was encouragement to home industries mentioned as the chief purpose. The acts which were framed with the latter purpose dealt with raw materials of commerce, such as grain, timber, skins and furs, which it was believed could be worked up within the colony. Thus wheat was required to pay an export duty in New Jersey in 1714 in order to encourage the inhabitants to make their own flour.⁸² A similar law was passed by the same colony eleven years later, and the policy was extended to staves, heading and other forms of timber, with a view to encourage coopers to make casks within the colony.⁸³ Skins and furs were more frequently required to pay export duties, in order to have them worked up by the tanners, curriers and shoemakers within the colonies. This was especially true of the southern colonies, where the plantation came to be more and more self-supporting.⁸⁴ In fact, so solicitous were some of the colonies to encourage the establishment of tanneries, that embargoes were often imposed (rather than export duties) as a check upon the exportation of raw hides and skins.⁸⁵ Sometimes the export duties were imposed to retain a commodity in the colony for consumption, a provision which applied in some

⁸² N. J. Archives, IV, 196.

⁸³ N. Y. Col. Doc., V, 767. The eastern division of New Jersey was chiefly interested in the passage of this act.

⁸⁴ Bruce, *Economic History of Virginia*, II, 474-480; Weedon, *Economic and Social New England*, I, 308; Bishop, *History of American Manufactures*, I, 429 et seq.

⁸⁵ Cf. p. 81. We must note in this place an act passed by the colony of New York in 1684 which provided a 10% ad valorem duty upon wheat, whale oil and whale bone which was not exported to England or the British West Indies. Certain provisos

colonies to European goods, iron or wool during the seventeenth century. Maryland imposed a 10% ad valorem duty on European goods which were reexported;⁸⁶ Virginia imposed a duty on iron and wool exported from the colony.⁸⁷ On the whole, the export duty was not made an effective weapon for restraining the exportation of commodities which were the produce of the colony; for, when such a course was deemed essential the usual method was the embargo. Had the industrial activities been more developed, probably this phase of the export duty would have met with more attention.

As a source of revenue the export duty was comparatively important, particularly in Maryland and Virginia, where it was one of the chief sources of indirect taxation. Like other sources of revenue it was a subject of dispute between the Assembly and the Governor, and the account of the various items of indirect taxation would be incomplete, which did not take note of such disputes. As a source of revenue, the export duties were not imposed to anything like the extent which was possible, had there been fewer disputes between the Governor and the Assembly, and had the resources been better utilized or the administrative methods more adequate.⁸⁸ In the southern colonies more reliance was placed on this form of tax as a source of revenue.⁸⁹ The objects for which the export

were inserted, but the records do not tell us definitely what they were. The avowed object of the act was to develop the direct trade with England.—Col. Laws of N. Y., I, 165.

⁸⁶ Bacon, Laws of Md., 1695, ch. 24; 1696, ch. 9.

⁸⁷ Hening, Statutes of Vir., II, 115; III, 63. The latter act imposed a duty of one penny per pound, but it never went into effect.

⁸⁸ Osgood, Amer. Col., I, 468, 479; II, 347, 356, 369. "Conflicts between legislatures and executives arose more from fiscal questions than from those of any other character."—Ibid II, 347. Douglas, Financial History of Mass., 32, 37-41; Robinson, History of Taxation in N. H., 3 et seq.; Smith, South Carolina, 289; Ripley, Financial History of Vir., 32-36, 62 et seq.

⁸⁹ There is considerable material in the various colonial documents

duty was levied were usually specified in the act itself; such specific appropriations included, among others, salaries of officials, the defense of the colony, public schools and support for a college.⁹⁰ For a closer study of the export duties for revenue, we shall consider the duties imposed on tobacco, lumber, skins and furs.

Export Duties on Tobacco. The welfare and prosperity of two colonies, Maryland and Virginia, came to be closely allied with the tobacco crop, even from the earliest days. Other colonies also took up its cultivation, but in only the two mentioned do we find that an export duty was levied upon tobacco as a fiscal measure.⁹¹

Maryland imposed a duty on tobacco as early as 1638, when a 5% duty was levied, unless exported to England, Ireland and Virginia.⁹² A similar law was passed in 1649,⁹³ whereby a duty of 10s. per hundredweight was imposed upon tobacco shipped in Dutch vessels "for any other Port than His Majesty's." Imposed originally for a term of seven years, it was ultimately repealed in 1676.⁹⁴ The first really important act, however, was passed in 1671.⁹⁵ It gave the proprietor a duty of 2s. per

which have been published, concerning the amount of revenue raised from export duties. The material is, however, far from complete. See also references in the preceding footnote.

⁹⁰ Mereness, Maryland as a Proprietary Province, 343.

⁹¹ New Netherland had a duty on tobacco exported as early as 1638.—Laws and Ordinances of New Netherland, 17. It was also dutiable in some of the colonies when imported.

⁹² Bacon, Laws of Md., ch. 2. The proceeds of the original act were intended for defense. It was very unusual to impose ad valorem duties on exports. This act was continued in 1641 and again in 1642 for two years. When the bill came up for discussion in 1641 it was proposed to make the duty perpetual.—Ibid, 1641, ch. 4; 1642, ch. 2; September session 1642, ch. 1.

⁹³ Ibid, ch. 9.

⁹⁴ Bacon, Laws of Md., ch. 2.

⁹⁵ Md. Archives, Proceedings of the Assembly, 1666-1676, pp. 255-258.

hogshead of tobacco, one-half being intended for the defense and support of the government of Maryland, the other for the proprietor. The grant to the proprietor was made with the understanding that he would accept good tobacco at 2d. per pound in lieu of his quit rents and alienation fines. The act was the cause of much dispute and ill-feeling between the proprietors and the Assembly for the next two generations. By an act of 1676 the same duty was continued through the life of the new proprietor, Cecilius Calvert,⁹⁶ but in 1692 the Assembly (under the royal government) granted to the Governor as a salary,⁹⁷ the shilling not intended for the personal use of the proprietor. In 1701 it was held by the Crown that one-fourth of the shilling should be used for the defense of the province.⁹⁸ In 1704, while still a royal province, the proprietor's shilling was made perpetual,⁹⁹ but it was found subsequently that the proprietor secured the best of the bargain. The Assembly attempted, after a lapse of years, to contend that the act was inoperative, since it had been enacted during the royal government. The Assembly stated that it was "sensibly concerned to find that 12d. sterling per hogshead since September 29, 1733, had been levied and collected from the people of the Province without any law that we know of to warrant the same. . . ." In 1750 the same point was again brought up, but it is probable that the proprietor was within his legal rights in this matter and in that of a 14d. tonnage duty, and therefore the people were not too anxious to have the king in council decide the matter.¹ Meanwhile, other

⁹⁶ Ibid, p. 550.

⁹⁷ Ibid, 1684-1692, pp. 438, 441.

⁹⁸ Mereness, Md., 172.

⁹⁹ Md. Archives, Proceedings of the Assembly, 1704-1706, p. 312.

¹ Mereness, Maryland, 346-348. Mereness sums the matter up as follows: "It is, therefore, clear that originally the duty for the support of government was given only in return for favorable terms

duties of a temporary nature had been imposed upon tobacco exported out of the province. In 1717 they amounted to a total of 3s. 9d. per hogshead of tobacco, which the Assembly itself considered very high.² The last act imposed prior to the Revolution, of which we find any record, was in 1747 (when a further duty of 3d. per hogshead was provided). Duties under the acts in force at that time still continued to be collected.³

In Virginia also an important income was derived from the duty on tobacco exported from the province. As a source of revenue, tobacco was not taxed. Such a duty was not imposed at such an early date as in Maryland, and more exemptions were allowed. The earliest acts, however, were political rather than fiscal in scope. The 10s. duty per hogshead of tobacco not exported directly to England in English vessels was aimed at the Dutch, with whom the mother country was struggling for commercial supremacy. Trade with the Dutch, however, did not cease,⁴ but the Dutch colony of New Netherlands shortly after the passage of this act, provided duties on goods imported from the English colonies in America, yet specifically exempted tobacco.⁵ That this was the intent of the Virginia act may be seen in part by the subsequent acts exempting Vir-

on which to pay quit-rents; that, later, the provision for the support of government was given an unlimited term of duration, while that with respect to quit-rents remained limited; and that, finally, the people themselves rejected the temporary provision for the payment of quit-rents, and were left with nothing but the perpetual agreement to pay for the support of government." 345.

² A Complete Collection of the Laws of Md., 181. The 2s. granted to the proprietor in 1715 continued in force by successive acts until 1733, and was granted as an equivalent for the quit-rents and alienation fines. Both parties (the proprietor and the people) felt suspicious about the agreement. Cf. Mereness, Md., pp. 80-84.

³ Bacon, Laws of Md., 1747, ch. 19; Correspondence of Governor Sharpe, II, 4.

⁴ Bruce, Econ. Hist. of Vir., I, 353-355.

⁵ Laws and Ordinances of New Netherland, 348.

ginia owners of ships from the duty on tobacco,⁶ and later the New England and adjacent provinces were exempted from the payment of the duty.⁷ The real purpose of the latter act, however, was the belief of the members of the Assembly that the duty interfered with the trade of the northern provinces.⁸ As a purely revenue measure, tobacco was not taxed until 1658 when a duty of 2s. per hogshead was imposed,⁹ with the view to remove somewhat the burdens of the poll tax, and at the same time furnish a revenue for public officials in the colony, and perhaps bring in a large amount of coin. Repealed in 1659, it was reenacted three years later, and became "a source of large revenue" for a long time.¹⁰ Numerous complaints were made by shipmasters concerning the size of the casks in which tobacco was shipped, and in consequence laws were enacted providing the size and for inspection of tobacco for export. Partly on account of this practical difficulty in loading vessels to the best advantage, and partly because of the comparative ease in smuggling, the tobacco came to be exported in bulk, as well as in casks. The Virginia Assembly therefore imposed a

⁶ Hening, Statutes, I, 537; II, 133.

⁷ Ibid, II, 218.

⁸ Bruce, *op. cit.*, II, 319; Ripley, *Financial History of Vir.*, 58; Hening, Statutes, II, 218. Cf. a letter by the lord proprietor of Maryland in 1661, in *Proceedings of Assembly*, 1637-1664, 420, 421. The exemption of the 2s. duty was accorded to Maryland tobacco laden in vessels on the Virginia shore of the Potomac, on condition that a like exemption should be granted to Virginia tobacco laden on the Maryland shore. The course of the Potomac as a partial boundary was the occasion of other disputes and adjustments. Cf. Bruce, *Econ. History of Vir.*, I, 387, 388.

⁹ Hening, Statutes, I, 491. As late as 1655 an act of Assembly had exempted inhabitants from the payment of any "taxe or custome (on tobacco) whatsoever, notwithstanding any thing in any former act or acts provided to the contrary."—Ibid, I, 410. In 1673 it was provided that the duty should be remitted if ample proof were furnished that the tobacco had been taken by the enemy.—Ibid, II, 309.

¹⁰ Bruce, *Economic History of Vir.*, I, 386.

duty on tobacco exported in bulk, placing the duty at 2s. for five hundred pounds of tobacco.¹¹ This 2s. duty was continued from time to time down to the Revolution, when the export duty on tobacco was repealed.¹²

Though imposed by Maryland and Virginia alone, the export duties on tobacco give us the best instance of such a duty for revenue on a staple article. As a fiscal measure, it was productive, but it had the capital defect that the exports varied enormously in amount and in value.¹³

Export Duties on Lumber. Six colonies passed acts imposing duties upon the exportation of timber. The revenue feature was not so pronounced on this commodity as it was on tobacco. That the duty was imposed with a view to encourage home industry is suggested by the fact that the colonies which imposed duties upon lumber were near the shipbuilding and coopering centers.¹⁴

In New Hampshire laws on this subject were proposed as early as 1693,¹⁵ but the first of these laws was passed in 1702. It provided a duty upon all lumber "transported out of or imported into this province."¹⁶ When

¹¹ Hening, Statutes, II, 413; Bruce, Econ. History of Virginia, I, 382, 383.

¹² Hening, Statutes IX, 162. It is interesting to note here that England permitted Virginia to apply the proceeds of the revenue duty of 1d. per pound on tobacco exported to any British colony in America, to the maintenance of William and Mary College. Ibid, VI, 92.

¹³ Ripley, Financial History of Virginia, 62-67; Bruce, Economic History of Virginia, *passim*.

¹⁴ Perhaps an exception to this statement is South Carolina where a duty of 20s. per hundredweight was laid upon cedar timber above a certain size. Yet this duty was imposed at a time when that province was encouraging her shipping.—Cooper, Statutes, II, 200, and reenacted at subsequent sessions.

¹⁵ In the act proposed in 1693 all kinds of lumber exported to "New England, New York, &c." were to pay specific duties. The proceeds were to be applied to the maintenance of the fort on Great Island.—N. H. Province Papers, III, 6, 7.

¹⁶ Passed in 1702, and continued the following year.—N. H. Province Papers, III, 249, 250.

the Governor attempted to secure its reënactment in 1704, his recommendation was not favorably received, since the assembly preferred direct taxes as on the whole more equitable. The words of the Governor are worth quoting here in part as they show the fiscal importance of this duty. He said,—“I know no better article for the advancement of the Revenue than that of lumber, which was no hard thing these two last years when they were below twenty shillings the thousand; now they are almost double that price they will better bear it,—and I am to tell you that laying of that tax is very well taken by the Right Honorable, the Lords Committee of Trade and Plantations. . . . I judge it the most equitable and easy method, and shall take care it be better collected than heretofore.”¹⁷ After a lapse of some years, another act was finally passed by New Hampshire (1714), since it was apparent from a report of the finances of the colony by the Governor that the proceeds of the direct taxes would be required for the province debt. Duties on boards, planks and staves, in addition to import duties upon liquors, molasses, sugar and tobacco, were therefore imposed, but there was still dissatisfaction among the lumber interests and the export duties lapsed the following year.¹⁸

Connecticut, the only other New England colony to levy export duties on timber, was the most active of them all in this respect.¹⁹ Her acts were not so much to secure

¹⁷ N. H. Province Papers, III, 291; quoted in part by Robinson, *History of Taxation in N. H.*, 55.

¹⁸ N. H. State Papers, XIX, 52. The duties were as follows: boards, 1s.; pine planks, 3s.; red oak hogshead staves, 6d.; white oak staves, 9d.; white oak pipe staves, 1s.; Indian staves, £10.

¹⁹ Two other New England colonies, in addition to those already mentioned, had provided to a slight extent export duties upon timber. The act of 1691 by Massachusetts, in addition to a large list of goods, imposed an export duty on boards, hoops and shingles. The act was clearly for purposes of revenue, but was not continued after 1691.—Batchellor, *Laws of N. H.*, I, 491. The retaliatory act of

revenue, as to encourage her trade with the West Indies and the Portuguese possessions. To some extent the duties were imposed to protect her timber preserves for her own shipbuilding and coopering industries, although this was only a minor consideration. Her first act, contained in the code of 1673, provided rather heavy duties upon a large variety of lumber. The rates were as follows: 8s. per 1000 barrel staves; 10s. per 1000 hogshead staves; 15s. per 1000 pipe or butt staves; 15s. per 1000 hogshead headings; 8s. per 1000 barrel headings; 10s. per ton of ship's timber; 3s. per 100 feet of two-inch plank; 1s. 6d. per 100 feet of boards; and 10s. per cord of bark. It is probable that this act was not intended for revenue; it is more likely that its primary purpose was to encourage home industry.²⁰ The subsequent acts provided export duties on timber sent to the neighboring colonies (Massachusetts Bay, New York, New Jersey, Rhode Island and New Hampshire)²¹ and in the main were intended to encourage the trade of her own inhabitants, rather than permit the neighboring colonies to engross that trade by the staves, headings and ship timber which they would export to the West Indies. The first act to that end was enacted in 1714, but was amended the following year, increasing the kinds of timber to be taxed.²² The act of

1721 provided a 10% ad valorem duty on exports to New Hampshire. Cf. p. 45.

Plymouth also imposed duties upon timber exported. In 1661 boards and planks paid a duty of 3s. per hundred; heading and barrel staves 6d. per hundred; and hogshead heading and staves 8d. per hundred.—Plymouth Col. Records, XI, 132. Subsequently, however, to encourage home industry, no timber could be exported until wrought up in vessels or casks.—*Ibid*, XI, 222.

²⁰ For prices of timber in New England at this time see Weeden, *Econ. and Social History of N. Eng.*, I, 333.

²¹ In the acts of 1714 and 1715. New Jersey was not included in the list of 1747.—*Public Rec. of Conn.*, V, 434, 499; IX, 286.

²² *Public Records of Conn.*, V, 434, 499. The duties of the act of

1747 again enlarged this list, and in several instances increased the rates.²³ Although Connecticut had duties on timber exported out of the province for about three-fourths of a century, the dominant purpose in view was the encouragement of her direct trade, rather than revenue. In that respect it is not improbable that her policy was influenced by New Jersey.

The latter province had been desirous of protecting her timber from unnecessary waste, yet the principle employed in part was the imposition of a duty upon lumber exported to the neighboring colonies. After several attempts²⁴ a bill was finally passed in 1714 imposing a duty of 30s. per 1000 pipe staves, and 20s. per 1000 hogshead staves, when exported to the neighboring colonies.²⁵ They were repealed three years later because they were "prejudicial to the inhabitants."²⁶ The most comprehensive of her acts was passed in 1743.²⁷ Duties were imposed upon lumber exported "to any of His Majesty's Colonies upon the Continent of America." The kinds of lumber taxed included ship's timber, planks and boards, masts, staves, headings and bolts.²⁸ The Assembly attempted to repeal a portion of the act the year following, but the

1714 were as follows: barrel staves, 20s. per 1,000; hogshead or pipe staves, 30s. per 1,000. The act of 1715 provided the following duties: "tun" of ship timber, 10s.; 100 ft. of plank, 5s.; 100 ft. of boards, 3s.

²³ *Ibid.*, IX, 286. The duties were as follows: 1,000 barrel staves, 15s.; 1,000 hhd. staves, 20s.; 1,000 pipe or butt staves, 30s.; 1,000 hhd. heading, 30s.; 1,000 bbl. heading, 15s.; ton of ship timber, 20s.; 100 ft. of planks, 5s.; 100 ft. of boards, 2s. 6d.; cord of bark, 20s.

²⁴ N. J. Archives, XIII, 113, 461, 463, 534, 541.

²⁵ Allinson, Acts of the Assembly of N. J., 17.

²⁶ Bishop, History of American Manufactures, I, 109; N. J. Archives, XIV, 26, 36, 38, 65.

²⁷ An act imposing duties on staves and heading was passed in 1725.—Allinson, Acts of Assembly, 72. Moreover attempts were made to provide a new law.—N. J. Archives, XV, 146, 154, 159, 161, 168.

²⁸ Allinson, Acts of Assembly, 134. The duties were as follows:

council voted the bill down for the reason that the act had not been in force long enough to judge of its good or bad effects.²⁹ The effects produced were probably beneficial, for the act was continued down to the Revolution.³⁰

On the whole, it is fairly certain that the export duties on lumber were not so clearly for revenue as the duties upon tobacco. On lumber, the more important acts imposed duties, when exported to neighboring colonies; whereas, in the case of tobacco, the duty was usually imposed irrespective of its destination. That more burdensome duties were not imposed on the lumber trade must be accounted for upon two grounds, viz.: the system of taxation in the colonies in which the duty was imposed, and the belief that adequate revenue from such a duty would hinder the trade of the colonies.

Export Duties on Skins and Furs. The last staple articles of commerce of importance during the colonial period, upon which export duties were imposed, were skins and furs. Of the twelve colonies which had export duties, eight had duties upon these commodities at one time or another; indeed in Georgia, North Carolina and Pennsylvania these were the only commodities upon which export duties were imposed.³¹ Considering the great economic importance of the fur trade in the earlier history of the colonies, and the fact that it was in the northern colonies that it formed a peculiarly valuable article of export, it is significant that the export duties were more numerous in the southern colonies than in the northern colonies.

logs and timber used for ships, 6d. per cubic foot; planks for the same purpose 1d. per square foot; masts, yards and bowsprits, 1s. per cubic foot; 1,000 staves, 10s., 20s., 25s. and 30s.

²⁹ N. J. Archives, XV, 388, 389.

³⁰ Bishop, op. cit., I, 109.

³¹ Charter to Penn., etc. and Laws, 1682 to 1700, 138; State Records of N. C., XXIII, 613; Watkins, A Digest of the Laws of Georgia, 149, 180.

Although the system of taxation was partly responsible for such a result, we must not underestimate the fact that such a duty was imposed in northern colonies.³²

The trade with the Indians, the incentive to westward exploration and migration, the establishment of posts on the frontier are all inseparably bound up with this article of commerce. If any colony can be taken as having a preponderating interest in the fur trade, that colony must be New York. The Dutch, during their possession of this territory, developed a thriving trade with the Indians in furs, and in fact secured an important source of income from the export of this commodity.³³ When the English took possession in 1664, duties were imposed, and in 1665 a proclamation appeared, to be in force until September, subjecting peltries to a duty of ten and a half per cent.³⁴ The instructions to Governor Andros in 1674 included a provision for rates on certain goods. Beaver was required to pay 1s. 3d. per skin, and all other skins and furs were to pay "proportionably to Beaver."³⁵ After the legislative Assembly was constituted the same policy was continued, though the skins were enumerated in detail with the rates.³⁶ The duties were lower than those imposed under the proclamation of 1674. As a whole, the duties upon furs and skins exported from New York were clearly for revenue, as had been the case of the duties imposed previously by the Dutch. New York was very desirous of promoting the Indian fur trade, and

³² Massachusetts had an export duty of 10s. for every £100 worth of peltries in 1691, as a revenue measure.—Batchellor, *Laws of N. H.*, I, 490. Pennsylvania also imposed a single duty on skins. The most important northern colony in this respect was New York.

³³ Osgood, *American Colonies*, II, 358; *Laws and Ordinances of New Netherlands*, 48, 73, 138, 221, 349, etc.

³⁴ *Ibid.*, II, 359.

³⁵ *N. Y. Col. Doc.*, III, 217.

³⁶ *Laws of the Col. of N. Y.*, I, 250, 290, etc.

in its attempts to promote it, met with greater success than any of the other English colonies in competing with the French.³⁷ As part of her efforts to secure control of the Indian fur trade, New York imposed duties on certain goods sent up the Hudson, and even at times the governor sought to check the exportation of these goods up the Hudson since they frequently found their way to Canada, and were used by the French in their trade with the Indians. When prohibitions or restrictions were imposed by the Assembly, the trading interests saw to it that they were not strictly enforced. Some of these acts were disallowed by the Crown as a violation of the English acts of trade and navigation.³⁸

The purpose of the three other colonies (Maryland, Virginia and South Carolina) which had fairly numerous duties on skins and furs exported, is perhaps not so clearly fiscal. The revenue feature was in several cases subordinate to a policy of encouraging certain home industries, though not infrequently it became essential to prohibit entirely the exportation of skins and furs. Various attempts were made in Maryland to regulate the export of skins and furs by duties, but the first act which was passed was in 1695. The proceeds were applied to provide revenue for free schools, although the chief source of income consisted of voluntary contributions.³⁹ In 1704 another act was passed toward the same end, and non-residents

³⁷ See Colden's Memoir on the Fur Trade, in N. Y. Col. Doc., V, 726-733; also *ibid*, 745 et seq. These documents contain many references to the Indian fur trade.

³⁸ This regulation of goods bound up the Hudson was an important phase of the Indian trade. The Dutch had imposed similar duties during their occupation of New York.—*Laws and Ordinances of New Netherland*, 154, 172; N. Y. Col. Doc., V, 775, 778, 781, 782; *Journal of the Council of N. Y.*, I, 591.

³⁹ Bacon, *Laws of Md.*, chap. 23; Mereness, *Maryland*, 138, 139.

were required to pay double the regular duties.⁴⁰ With the repeal of this act in 1723, Maryland ceased to impose export duties upon skins and furs.

South Carolina imposed duties upon skins to secure revenue during the earlier period for her fortifications, and later for general public expenses. Her first export duty (enacted in 1691) imposed specific duties on skins and furs.⁴¹ The rates were modified subsequently, and in 1716 duties were imposed upon tanned and neat leather calf skins and raw hides with the view to checking their exportation.⁴² By this act the duties were made perpetual, but the Lords Proprietors repealed it three years after its enactment. Nevertheless, the duties on hides, skins and leather were practically restored by the act of 1721 and further reënactments to 1767. South Carolina, therefore, may fairly be said to have had a definite fiscal policy in providing an export duty on skins and leather.

Virginia was not as consistent as South Carolina in imposing export duties on skins and furs, but she acted from similar motives. An export duty was laid upon hides as early as 1660,⁴³ though the early and even the later policy had been to prohibit the exportation of this article of consumption. Her first duty for revenue was imposed in 1691 for the support of William and Mary College. Duties were imposed on iron and wool, and in addition 1s. upon raw hides, 2s. upon tanned hides, 8d. upon buckskins, 5d. upon doeskins, and 1s. upon elkskins.⁴⁴ This

⁴⁰ Bacon, *Laws of Md.*, ch. 27; repealed, 1723, ch. 11. The rates varied from 3f. to 12d. per skin.

⁴¹ Cooper, *Statutes of S. C.*, II, 64. The duties were as follows: deer skins not stamped or tamped, 3d.; a pound of beaver skins, 7½d.; other skins, 3d.; fox or cat skin, 1d.; boar skin, 6d.; raccoon skin, ½d. A new act passed in 1696 and continued in 1699, 1700 and 1702, made the duties uniformly 1d. per skin or fur.

⁴² Cooper, *Statutes of S. C.*, II, 200, 649.

⁴³ Hening, *Statutes*, II, 124.

⁴⁴ *Ibid.*, III, 63.

act never went into effect, and two years later a much better act, from the fiscal point of view, was passed, providing duties varying from 3f. to 6d. per skin.⁴⁵ The duties were continued from time to time, and were sometimes increased for special purposes. The most burdensome duty, as a revenue measure, was the act of 1744, when raw hides paid 2s. 6d. and tanned hides 5s. This rate proving prohibitive, the old rates were again replaced. Experience had shown that "six pence on a raw hide increases the college revenue, is easily borne by the community, and not complained of by the trader or exporter."⁴⁶ This statement was made by a joint committee of the two houses, in response to the disallowance of the revised law enacted in 1748. It seems evident, however, that the duties were still collected for the support of the college as late as 1765, for in that year the Assembly provided for the exemption from the payment of duties of dressed hides and skins if the exporter had brought them into the province.⁴⁷

Except in New York the duties imposed upon skins and furs in the seventeenth century were intended to restrict their exportation. Toward the end of that century and the beginning of the following century, the emphasis was placed upon revenue. With the exception of the four southern colonies south of Maryland, no export duties were imposed upon skins and furs after the middle of the eighteenth century.

The export duties were more frequently applied than is usually recognized in the discussion of the historical importance of the export tax at the time of the constitutional convention. Its roots go deep into the colonial period, and these in turn are founded on the mercantile notions which

⁴⁵ Bruce, *Econ. History of Vir.*, II, 483; Hening, *Statutes*, III, 123.

⁴⁶ Hening, *Statutes*, V, 438.

⁴⁷ Hening, *Statutes*, V, 437, 438; VI, 91; VIII, 142.

attempted to justify the use of export duties, both for revenue and for encouragement to certain home industries. Although export duties were imposed principally upon tobacco, lumber, and skins and furs by the colonial assemblies, they were occasionally levied upon other commodities.⁴⁸

⁴⁸ Massachusetts, New Hampshire and Plymouth imposed export duties on fish (Batchellor, *Laws of N. H.*, I, 491; Plymouth Col. Rec., XI, 131, 206, 228); Massachusetts, Maryland and Virginia on meat (Hening, *Statutes*, II, 21); Bacon, *Laws of Maryland*, 1694, ch. 23; 1704, ch. 27; 1723, ch. 11; Massachusetts, New York and New Jersey on wheat (Col. *Laws of N. Y.*, I, 165; Allinson, *Acts of Assembly of N. J.*, 17, 72); Maryland and Plymouth on pitch and tar (Plymouth Col. Records, XI, 132; Bacon, *Laws of Maryland*, 1695, ch. 24; 1696, ch. 9); Virginia on iron and wool (Hening, *Statutes*, II, 115; III, 63); Plymouth on oysters and iron (Plymouth Colony Records, XI, 132).

CHAPTER III

BOUNTIES, INSPECTION LAWS AND EMBARGOES

BOUNTIES.

The policy of increasing trade and commerce in colonial products took two general forms. The first of these was by means of a bounty—usually given for the production of articles of commerce. The result which was usually expected from a bounty was the increased production and subsequent exportation of certain goods to England or elsewhere. The second form of aid to trade was the regulation or inspection of commodities for export.

Following the precedent of England, bounties were granted in all the colonies except Delaware. Those of the New England colonies, and Virginia and South Carolina are especially worthy of note. The bounties were chiefly of two kinds:¹ those granted as an aid to the production of some commodity, and those granted as an aid to their exportation. The tendency was toward the former method.

¹ "Aside from the usual method of granting pecuniary bounties proportional to the amount of the product, prizes were offered for the first or the best produced; taxes were remitted to manufacturers; monopolies of the market were given for limited times; lands were granted; bills of credit and loans were issued to the projectors of mills; producers were exempted from military duty; certain articles were either made receivable for taxes or were constituted general legal tender; and in many cases the declared purpose was to promote a domestic production. The branches of industry thus helped by the colonial government were not only those engaged in the production of raw materials and naval supplies, but also manufactures, as of salt, powder, fire-arms, iron, linens, cottons, and woollens." Amer. Hist. Assn., III, 470, 471.

Bounties for Production. The bounties granted by the several colonies to encourage the production of certain commodities covered a large list of articles, especially hemp and flax, and their manufacture. The northern and middle colonies restricted their bounty legislation almost exclusively to these two articles; the southern colonies (i. e., Virginia and South Carolina) granted bounties for production on a much more numerous group of commodities. Agriculture constituted the chief means of livelihood to the colonists, although in New England owing to climate and the nature of the soil, greater emphasis must be placed upon lumbering, ship-building, trading and fishing. In the northern colonies we find a greater degree and variety of household manufactures than in the southern colonies, and this in part accounts for the comparatively numerous bounties in the former colonies for the manufacture of linen and sail-cloth.

The Governors not infrequently urged the colonial assemblies to grant bounties on those products which would furnish a means to pay the balances due to England for her manufactured articles, and yet would not compete with the commodities produced in England.² A fair illustration, perhaps, is found in an address by the Lieutenant-Governor of Pennsylvania in 1739 to the Assembly. He states that "both my Duty and Inclination call upon me to recommend such things to you as I think most likely to advance the Prosperity of this Province. The soil of many parts of it is productive of Hemp and Flax, and there is Wood in abundance for making Pot-Ash. There seems, therefore, to be wanting nothing but a due encouragement from the Legislature, to engage the Attention of the Inhabitants to the Improve-

² Votes of the Assembly of Pa., III, 6, 7, 128, 129; Journal of the Council of N. Y., II, 1540, 1541; N. J. Archives, 1st series, IX, 491; XXIV, 542, 555.

ment of these valuable Commodities—Valuable, as they will furnish your Merchants with a Remittance for the Manufactures imported from Great Britain; and consequently make Gold in some degree current here, as well as set reasonable Bounds to the course of Exchange. And the more Valuable, as they do not interfere with the Product of your Mother Country, but will be of immediate Advantage to it. . . .”³ We must not conclude, however, that this was the only, or even the usual method of securing the bounty. Petitions were sometimes sent in praying for a bounty.⁴

Bounties were granted for the production of hemp and flax (especially the former) by most of the colonies.⁵ With the exception of Virginia and Maryland, however, these bounties were not granted until the first few decades of the eighteenth century, and the number of grants show a decided falling off towards the Revolution. Suitable provisions were enacted in the way of inspection to insure the quality of hemp or flax which was produced. Inspectors were either specially appointed, or a justice was given the duty to see that the hemp was “water-rotted, well-cured and clean-dressed,” as provided, for example, in the Massachusetts act of 1725.⁶ The rates varied not only in different colonies, but even in the same colony at

³ Pa. Archives, 4th series, I, 674; Votes of the Assembly of Pa., III, 324.

⁴ N. H. Town Papers, IX, 709-712; Votes of the Assembly of Pa., 231, 232.

⁵ Among the earlier acts granting bounties on hemp or flax (or both) see Watkins, Digest of the Laws of Ga., 156; Bacon, Laws of Md., 1671, ch. 20; Acts and Resolves of Mass., I, 473; Allinson, Acts of the Assembly of N. J., 281; Pa. Statutes at Large, III, 314; Acts and Laws of His Majesty's Colony of R. I., 115; Cooper Statutes of S. C., III, 436; Hening, Statutes of Virginia, I, 469.

⁶ Acts and Resolves, II, 362. Pennsylvania had omitted the requirement of “water-rotted” from the act of 1722, and a few years later was compelled to add such a provision.—Statutes at Large, III, 314; IV, 30, 68.

different times, a fact which may be explained in part by the depreciation of the currency in the colonies, and also by the insufficient encouragement offered by some of the earlier acts. A cross-section in the earlier decades of the eighteenth century will give us a good view of these differences. In New Hampshire there was the exceedingly high duty of 12d. per pound granted for three years by act of 1719. The hemp was received at the treasury for taxes, an arrangement which was not at all uncommon for commodities whether there was a bounty on them or not.⁷ Massachusetts had granted a bounty of 9s. 4d. per 112 pounds in 1715, and doubled the rate three years later.⁸ Rhode Island provided, in 1721, a bounty of 6d. per pound.⁹ In Pennsylvania in 1722 it was 1d. per pound;¹⁰ in Maryland, a year later, it was fixed at fifty pounds of tobacco per hundredweight;¹¹ in Virginia, the rate for exportation (not production alone) in 1722 was 4s. per hundredweight;¹² and in South Carolina, the rate during the same year was 8s. 4d. per hundredweight.¹³

We must not conclude that the bounties on hemp and flax were always successful. Such was by no means the case.¹⁴ The comparatively high bounties offered by England on the importation of hemp from the colonies were a failure. Only small quantities were shipped to England. From returns of the custom house sent to the Board of Trade, 316 hundredweight of hemp had been imported

⁷ Acts and Laws of N. H. (1726), 143; Weeden, *Economic and Social History of New England*, 203, 314, 325, 328, 332, 479, 798, etc.

⁸ Acts and Resolves, II, 28, 102.

⁹ Acts and Laws of His Majesty's Colony of R. I. (1730), 149.

¹⁰ Pa. Statutes at Large, III, 314.

¹¹ A Compleat Collection of Laws of Md., 254.

¹² Henning, *Statutes*, IV, 96.

¹³ Cooper, *Statutes*, III, 184.

¹⁴ Journal of the Council of N. Y., II, 1540.

between 1712 and 1729.¹⁵ It is impossible to gauge the amount of hemp which was produced, though not exported, but there are indications that it was an article of some importance in several of the colonies.¹⁶ Colonial records show us in some instances the amount of bounty that was paid upon hemp which was duly inspected. In Pennsylvania, from March 5, 1729, to January 26, 1730, the bounty was paid upon 31,251 pounds of hemp; from March 3, 1730, to July 2, 1731, upon 17,266 pounds, and smaller amounts about this period.¹⁷ Furthermore, the importance of the domestic manufactures coupled with the fact that the spinning-wheel, the loom, and the hand card were to be found in most of the homes of the northern colonies give us good evidence of the production of hemp and flax.¹⁸ Evidently these had to be produced practically in the American colonies, for England was a steady consumer of Ireland's output.¹⁹

Nor was the incentive lacking to encourage such domestic manufacture. Necessity lay back of the movement; bounties tended to encourage it. Societies were also formed to aid these industries, particularly during the last few decades prior to the Revolution. Virginia, in 1682, had passed a law encouraging the linen and woolen manufactures, because "it might be of some use," as the Governor expressed it, but it was repealed before its time limit on account of the heavy burden which it imposed,

¹⁵ Lord, *Industrial Experiments in America*, 83, 86, appendix B.

¹⁶ *Journal of the Council of N. Y.*, I, 661.

¹⁷ *Votes of the Assembly*, III, 39, 57, 64, 91, 104, 119, 159, etc.

See Weeden, *Economic and Social History of New Eng.*, II, 496; Bishop, *passim*.

¹⁸ Bruce, *Econ. History*, II, 458 for Virginia; Bishop, *History of American Manufactures*, I, 336, et seq.; *N. Y. Col. Doc.*, V, 591 et seq.; Macpherson, *Annals of Commerce*, III, pp. 49, 159, 162.

¹⁹ Cf. *N. Y. Col. Doc.*, V, 617.

and the losses incurred in inspection.²⁰ The southern colonies, with the exception of Virginia, did not grant general bounties on these manufactures until the decade before the Revolution. The situation in the northern colonies was different. Massachusetts was particularly active, her first bounty dating from October 7, 1640, when a bounty of 3d. per shilling's worth of linen, woolen, and cotton cloth was offered.²¹ In 1722 bounties were offered for canvas and linen made in the province.²² That colony again granted a bounty of £1500 for the manufacture of linen in 1753.²³ Connecticut was not far behind Massachusetts in these efforts to encourage home manufactures;²⁴ while Rhode Island, in 1751, after granting a bounty of one-third the appraised value on cloth manufactured from wool or flax, repealed the law on the ground that "it may draw the displeasure of Great Britain upon us, as it will interfere with their most favorite manufactory, while that on flax, and the fisheries, have been already tried and not been found beneficial."²⁵

The increasing activity of the colonies in these industries during the decade prior to the Revolution was not confined to the northern colonies. The opposition of the colonists to the more effective enforcement of the colonial system led them to develop their own resources more energetically than heretofore. Non-importation agreements were agreed to; societies offered premiums for homespun articles; the colonies in several instances offered

²⁰ Bruce, *Econ. History of Vir.*, II, 456, 457; Hening, *Statutes*, II, 503; III, 16, 121, 293.

²¹ Records of the Colony of Mass. Bay, I, 303; Bagnall, *Textile Industries*, 4, 5. Cf. order of 1655 in Whitmore, *Col. Laws of Mass.* (1887), 141.

²² Acts and Resolves of Mass., II, 241, 242.

²³ The purpose of this bounty is set forth in Bagnall, *op. cit.*, 28 et seq.

²⁴ Public Rec. of Conn., VII, 512.

²⁵ Records of R. I., V, 319.

bounties or granted monopolies.²⁶ Maryland, in 1765, provided that each county court should pay out eight thousand pounds of tobacco annually in prize money for the best manufactured pieces of linen.²⁷ South Carolina, in 1770, provided for a five-year term a bounty of £30 for every hundred pounds' value of "good and merchantable linens and thread," made in the province.²⁸

Of all the commodities from which much was expected at the beginning, silk was perhaps one of the most prominent. Bounties upon its production were offered by Connecticut, New Jersey, South Carolina, Georgia and Virginia, and Governors in other provinces urged the assembly to provide bounties for raising silk as a suitable commodity to send to England.²⁹ That the climatic conditions and the labor problem for the successful establishment of such an industry were not realized, is apparent from the records; because it was a new and perhaps risky undertaking, bounties were to be offered.

With the exception of Virginia, the bounty legislation for the production of silk is limited to the middle of the eighteenth century. The early attempts of Virginia to encourage the cultivation of silk rest upon the desire to secure a diversity of commodities. A special enactment required owners of land to plant ten mulberry trees for every hundred acres of land, but the act was repealed in 1659, for it was found that the results were not so advantageous to the province as had been anticipated.³⁰ Mean-

²⁶ Bagnall, *Textile Industries*, 37-60, cites associations that were formed in the northern colonies to encourage these manufactures.

²⁷ Cf. also Bacon, *Laws of Md.*, 1731, ch. 3; *Laws of Md.* (1787), ch. 6, session of 1765.

²⁸ Cooper, *Statutes*, IV, 316.

²⁹ Pa. Archives, 4th series, I, 428, 475, 545.

³⁰ Hening, *Statutes of Virginia*, I, 420, 520. Reënacted in 1662, owing to the low value of the tobacco crop and the attempt to produce a greater variety of commodities.—*Ibid.*, II, 121.

while, bounties had been offered, but without the expected results, and the assembly finally offered ten thousand pounds of tobacco for every fifty pounds of silk produced in the province. The low stage of the tobacco culture at this time tended to encourage the silk industry, and some silk was produced. Governor Berkeley, writing to the Lords of Trade in 1671, stated that "of late we have begun to make silk and so many mulberry trees are planted, that if we had skilful men from Naples or Sicily to teach us the art of making it, in less than half an age, we should make as much silk in a year as England did yearly expend three-score years since."³¹ So long, however, as the tobacco culture furnished any profit, the indifference to the silk industry remained.³² Connecticut provided a bounty in 1734 upon articles made from silk produced in the province, but it is doubtful whether it had any effect, although attempts were made to revive the act after its expiration.³³ New Jersey was the only other northern colony in which bounties were offered for silk. Upon the recommendation of Governor Franklin, that colony in 1765 provided for the planting of mulberry trees and the production of raw silk.³⁴ The production of silk in the colonies of South Carolina³⁵ and Georgia was more successful,

³¹ Chalmers, *Political Annals*, I, 346.

³² Bruce, *Econ. History of Virginia*, I, 365-370, 396-400; Hening, *Statutes of Virginia*, I, 469, 487, 521; II, 121, 199, 242, 272.

³³ *Public Rec. of Conn.*, VII, 494, 495; Bagnall, *Textile Industries*, 23, 61; Bishop, *History of Manufactures*, I, 360. The articles for which bounties were granted included: sewing silk, 1s. 6d. per ounce; silk stockings weighing four ounces, 7s. 6d.; silk "stuff," 1s. per yard,—and where the "warp is all silk," 2s. 3d.; silk, half yard wide, according to weight, 3s. 9d.; 6s., 9s. per yard.

³⁴ Allinson, *Acts of the Assembly of N. J.*, 281; *Archives of N. J.*, 1st series, XXIV, 542, 543; IX, 491.

³⁵ In 1736 a bounty of 20s. was granted for every pound of silk produced, and 10s. for every additional pound above ten.—Cooper, *Statutes*, III, 436, 613. An act of this colony in 1744 empowered commissioners to purchase balls of silk, made in the colony, at a spec-

especially in the latter, yet even here only small quantities were produced and exported. Moreover, the bounties in both colonies must have constituted only a secondary consideration, other factors of moment being the activities of the home government and of private societies,—and in Georgia the trustees themselves.³⁶ In the latter colony, indeed, it was anticipated that the culture of the silkworm would prove a very profitable undertaking, yet her efforts ended almost in total failure. Almost everything was done which at the time it was believed would encourage the silk industry in Georgia. Filatures were established, experts employed, machines, trees, seed and silkworm eggs furnished, and bounties were offered at an expense to the proprietors, up to the time of the surrender of their charter, of nearly £1500.³⁷ In 1755, the Council ordered a bounty of 3s. to be paid for every pound of cocoons raised in the province and brought to the public filature in Savannah. Some results were secured, for five months later the Council ordered the payment of £70, while larger amounts were subsequently paid out.³⁸

ified rate per pound or bushel. In 1747–8 eight boxes of raw silk, valued at £228 sterling were exported from South Carolina.—Carroll, *Historical Collections of S. C.*, III, 237. See also table of imports and exports from 1731 to 1755, *ibid*, 272.

³⁶ Col. Rec. of Ga., VI, 324.

³⁷ Even the deputies to the early assemblies had to have a hundred mulberry trees planted and properly fenced upon every fifty acres which they owned, and after 1753 such representatives had to have in their family one person instructed in the art of reeling silk, and in addition had to produce fifteen pounds of silk for every fifty acres of their land. These provisions were, of course, not the only qualifications for a representative.—Col. Rec. of Ga., VI, 181, 320, 323, 325, 390, 407; Jones, *Hist. of Ga.*, I, 433, 434; Bishop, *Hist. of Manuf.*, I, 357.

³⁸ Col. Rec. of Ga., VII, 114, 208, 244, 803. The bounties were subsequently reduced to 2s. 3d. and later to 1s. 6d. per pound. Governor Wright gives a good account of the condition of the silk industry in Georgia in a letter to the Earl of Hillsborough, July 1, 1768.—Cited in Jones, *op. cit.*, II, 75–78.

By the time of the Revolution, however, the filature had fallen into disuse, and the industry had practically died out in Georgia. In general, the attempts to establish a silk industry in the colonies were a sacrifice to the principles of the colonial system, though at the time many believed that this industry could be made profitable upon due encouragement. In fact, the silk which was actually sent to England was frequently commended for its quality.³⁹

Of provisions, wheat, flour and salt, received bounties at one time or another in several of the colonies. Wheat was one of the staples of the middle colonies.⁴⁰ Massachusetts and South Carolina both granted bounties in attempts to encourage its production, and especially its conversion into flour. In the former province a bounty was granted by the same act upon wheat, at 8d. per bushel, and upon flour from wheat produced in the province, at 8d. per hundredweight. The flour was intended for home consumption.⁴¹ In South Carolina an unsuccessful attempt was made in 1694 to encourage the production of wheat; later efforts were more successful and it was deemed expedient to grant (1744) a bounty of 2s. 6d. per hundredweight on flour sold in Charleston, made from wheat raised in the colony. In 1771 the bounty on flour was made 10s. per hundredweight, "equal in quality and goodness to the best flour which is made in and imported from any of the Northern Colonies."⁴² The bounty on salt,

³⁹ Col. Rec. of Ga., VII, 270; Bruce, *Econ. History of Vir.*, I, 370; Bishop, *History of Manufactures*, I, 357.

⁴⁰ N. Y. Col. Doc., VI, 19.

⁴¹ Acts and Resolves of Mass., IV, 527.

⁴² Cooper, *Statutes*, III, 613; IV, 327; Trott, *Laws of the Province of S. C.*, 34. Virginia in 1658, granted an export bounty of 10,000 pounds of tobacco upon £500 worth of wheat produced in the colony (its value being fixed at 5s. per bushel). The act was repealed shortly afterward; provision was also made for raising wheat whereby every tithable person was permitted to plant one acre in

which became so common during the Revolution, was granted by Virginia and South Carolina.⁴³ This article, so essential to the fishing industry of New England, was one of the few which could be imported from Europe or a foreign port without passing through an English port, as provided by the act of Parliament in 1663.⁴⁴ The colonies depended upon foreign trade for this necessary supply, and the ordinary method of increasing the supply was not by a bounty but by exemption from import duties,⁴⁵ and even the grant of a short-term monopoly to individuals within the province.⁴⁶

It was unusual to grant bounties to encourage ship-building. It was an important industry, particularly in New England, and complaints even reached Parliament

wheat in place of two acres of Indian corn. There is evidence that this provision was carried out.—Hening, *Statutes*, I, 469; II, 123; Bruce, *Econ. History of Virginia*, I, 380. Georgia also provided a bounty on the production of wheat.—Watkins, *Digest of the Laws of Georgia*, 156.

⁴³ Virginia hoped to make it a staple article by providing a bounty of 10,000 lbs. of tobacco for 800 bus. of salt produced.—Hening, *Statutes*, II, 38. South Carolina encouraged its production in 1694, and again in 1725. At the latter date the bounty was 12d. per bushel. The sole right of making salt was given to William Melli-champ, on condition that he should sell the salt at a rate not exceeding 10s. per bushel.—Trott, *Laws of S. C.*, 34; Cooper, *Statutes of S. C.*, III, 247.

⁴⁴ 15 Chas., II, c. 7.

⁴⁵ Ante under import duties. *Votes of Assembly of Pa.*, III, 6.

⁴⁶ An occasional bounty was granted upon other articles which it was anticipated would become staple commodities. South Carolina granted a bounty on indigo and wine in 1694; and upon wine and olive oil in 1744. In the latter act, the bounty on wine was to be £4 per pipe produced in the colony, although the first pipe was to receive a bounty of £100; on olive oil the bounty was £1 per gallon.—(Trott, *Laws of S. C.*, 34; Cooper, *Statutes*, III, 615). Virginia granted a bounty on woolen goods in 1682 amounting to five pounds of tobacco for every yard of cloth. (Hening, *Statutes*, 121, 242.) Rhode Island had granted bounties on woolen cloth, whale bone, whale oil and codfish in 1744 and again in 1751. At the latter date, the bounties were as follows: 4s. per barrel of whale oil; 1s. per pound of

from the shipbuilders on the Thames of the effect of colonial competition.⁴⁷ The southern colonies built comparatively an insignificant amount of tonnage for the foreign trade, most of the ships trading there being owned and built by the northern colonists or by the English. The attempts of Virginia and South Carolina, therefore, in granting bounties to encourage shipbuilding, under adverse economic conditions, are indicative of a desire to encourage their own navigation interests. Ordinarily, this result was sought by exempting vessels owned or built within the colony from tonnage and impost duties, in whole or in part. The provisions of the Virginia act met with a small measure of success for bounties were actually paid. In 1661 a bounty of fifty pounds of tobacco was granted for every ton of a vessel built in the colony and capable of making a sea voyage. Subsequent legislation increased the bounty to a hundred pounds of tobacco per ton if the ship was between fifty and a hundred tons, and two hundred pounds of tobacco if the ship exceeded that size. Berkeley, in a report sent in 1671, erroneously held that only two vessels were owned in Virginia, and even these were not built there.⁴⁸ South Carolina in 1751 appropriated one-fifth of the revenues of an impost as a bounty for building ships in the province and as an encouragement for shipwrights and caulkers to settle there. Proving inadequate, the bounty provision was repealed, and no further attempts were made at bounty legisla-

whale bone; 2s. 6d. per quintal of codfish. It was repealed the same year because the bounty on wool interfered with England's woolen industry and might "draw the displeasure of Great Britain upon us." (Rec. of R. I., V, 100, 318, 319. Arnold, History of R. I., II, 103, 145, 179; Corres. of the Gov. of R. I., I, 64.)

⁴⁷ Child, Discourse of Trade; N. Y. Col. Doc., III, 263; V, 59; VI, 207, 511; Votes of Assembly of Pa., III, 7.

⁴⁸ Hening, Statutes, II, 122, 178, 204, 242, 516; Bruce, Economic History of Virginia, II, 434-439.

tion.⁴⁹ Other colonies also made efforts to encourage shipbuilding directly, but these did not materialize.⁵⁰ In all probability the bounty legislation alone to encourage shipbuilding in the southern colonies could not have succeeded. There was not such a necessity for the southern planter to seek a market for his goods, as was the case in the northern colonies. British legislation had established certain markets for the planter. Moreover, the nature of the soil, the natural resources, and the character of the people themselves were all contributory causes.

Bounties for Exportation. The bounties on goods produced in the colonies were much more numerous than upon those produced expressly for exportation. The bounties granted for articles exported attempted to encourage foreign trade directly; in many instances the bounties for production had that effect indirectly.⁵¹ The export bounties were granted almost exclusively by the three southern colonies of Virginia, North Carolina and South Carolina and included hemp, flax, tar, pot and pearl ashes, saltpetre, indigo, cotton and ginger. Of this list, only hemp and tar were naval stores, which England was so anxious to secure from the colonies during the earlier part of the eighteenth century. She granted bounties upon naval stores; reduced or removed duties upon their importation from the colonies; restricted their market and reserved certain timber to herself. The colonial governments, however, did not reciprocate to any extent by means of bounties upon naval stores exported from their bounds. Hemp received the most attention, and bounties for exportation were provided in Virginia, North Carolina and South Carolina. Virginia provided a

⁴⁹ Cooper, Statutes, III, 742; IV, 10.

⁵⁰ Journals of the Council of N. Y., I, 661, 731; N. J. Archives, 1st series, XIII, 433, 463.

⁵¹ See for example, Cooper, Statutes of South Carolina, III, 184.

bounty of 4s. current money per hundredweight in 1722, and a further bounty of 2s. in 1745.⁵² South Carolina provided export bounties on hemp and flax in 1744. On hemp the bounty amounted to 8s. and on flax to 10s.⁵³ North Carolina, in 1764, also provided an export bounty on hemp and flax at 16s. 8d. per 112 pounds for hemp and 13s. 4d. for flax. Tar was the only other naval store upon which an export bounty was granted. Shortly after the bounty granted by Parliament upon tar, pitch, turpentine and rosin,⁵⁴ New Hampshire offered a bounty upon the exportation of tar made in that province. Seven years previously, the Earl of Bellomont had written that tar had been made in that province. He computed how much tar could be made and even asserted that New Hampshire and New York could provide enough naval stores to pay for the manufactures of England.⁵⁵ Virginia was the only other colony which had granted an export bounty on tar,⁵⁶ in the same act providing the bounty on hemp. As an effective measure, the colonial export bounties upon hemp and tar were practically failures, even with the additional import bounties granted by Parliament.⁵⁷ The hemp which was produced, even with the aid of bounties on production, could not provide

⁵² Hening, Statutes, IV, 96; VI, 144; VIII, 363. The act of 1745 limited the amount to be paid out under its provisions to £4,000.—*Ibid*, V, 357.

⁵³ Cooper, Statutes, III, 615. The act granting a bounty on the production of hemp, passed in 1722, was repealed by this act.

⁵⁴ 3 and 4 Anne, c. 10, sec. 11.

⁵⁵ N. H. Province Papers, II, 348, 349; N. Y. Col. Doc., IV, 668 et seq.

⁵⁶ Hening, Statutes, IV, 96.

⁵⁷ Lord, Industrial Experiments, 85. "Macpherson, who gives statistics of the exportation of naval stores from Carolina, where alone hemp seemed to thrive, for a considerable number of years, mentions no hemp until the year 1769, in which 290,095 lbs. were sent over. I find no mention of exportation from any other colony. . . ." Cf. Belknap, Hist. of N. H., III, 219.

for the home industries, nor did the colonists have any adequate knowledge of the proper soil or the best methods for its production on a large scale.

A word or two must be added about the export bounties occasionally offered by colonial legislatures. The same act which granted bounties on hemp and flax in South Carolina also provided them for cotton, ginger and indigo. The bounty on "neat, well cleared and merchantable" cotton was 3d. per pound; on merchantable ginger 5s. per hundredweight; and on "neat and merchantable" indigo 1s. per pound. Neither cotton nor ginger were of any importance during the colonial period, though seven bags of the former, valued at £25 sterling, were exported from South Carolina in 1748.⁵⁸ Indigo, however, fared differently. It had been produced in South Carolina in the seventeenth century, but had declined and was reintroduced about 1741. Within a comparatively few years it became the second staple of South Carolina. Part of the success in its cultivation must be attributed to the bounty, which was taken off two years after it had gone into effect, because it was no longer needed. Subsequently Parliament granted a bounty, and as indigo was an enumerated commodity, it was exported to England in large quantities.⁵⁹ Pot and pearl ashes also received attention from North Carolina and South Carolina, by way of export bounties. The latter province granted a bounty on potashes in 1707, and again in 1712, at which time the bounty was 40s. per ton. North Carolina provided a bounty on pot and pearl ashes in 1764, amounting to 8s.

⁵⁸ Carroll, *Historical Collections of S. C.*, II, 235.

⁵⁹ Cooper, *Statutes of S. C.*, III, 671; Carroll, *Historical Collections*, II, 235; Ramsay, *History of S. C.*, II, 209; McCrady, *History of S. C.*, II, 267-270, 389, 487, 488; Bishop, *History of Manufactures*, I, 348, 349, *N. Y. Col. Doc.*, V, 610. Georgia also produced large quantities of indigo, but did not offer bounties for it.

and 15s. per hundredweight respectively.⁶⁰ Pennsylvania also had a bounty of two pence per gallon on "proof spirits" distilled in the province and exported "out to sea."⁶¹

The administration of these acts was somewhat different from that of acts granting bounties on the production of commodities. In the latter case, certificates were required from a county justice or other officer, stating that the articles were actually produced within the colony by the person claiming the bounty. In the former case, the person could claim the bounty only after having duly exported the commodities and received a certificate from the proper official at the port from which they were shipped.

All of the colonies granted bounties at one time or another.⁶² The usual method was upon the production of commodities, yet Virginia, North Carolina and South Carolina, especially the latter, also emphasized bounties on the exportation of certain commodities. Many of the bounties were, as we have seen, beneficial, but to what extent, it is impossible, perhaps even fruitless to determine. Heretofore the Parliamentary bounty acts have been emphasized; yet we must not overlook the fact that the colonies were also active in encouraging the production and exportation of raw materials of commerce.

INSPECTION REGULATIONS.

The General Inspection Policy in Outline.—The second means by which the trade of the colonies was regulated or

⁶⁰ Cooper, Statutes of S. C., II, 307, 385; State Rec. of N. C., XXIII, 923; Carroll, Historical Collections, II, 235. N. Y. Col. Doc., V, 610. The act of 1707 of South Carolina also granted a bounty on saltpetre.

⁶¹ Pa. Statutes at Large, III, 415.

⁶² Concerning Delaware, see note 4, page 18.

encouraged is to be found in the inspection laws (of which there were several hundred) enacted in the several colonies. The colonies usually provided for the inspection of their staple articles for export, while occasional provision was made for the inspection of other articles.⁶³ The chief purpose of these laws was to raise or preserve the reputation of the commodities in the foreign market, for it was not at all uncommon that "deceit and fraud" were practiced as to the quality or quantity of the articles exported.⁶⁴

The inspection laws become more detailed as a rule as we approach the Revolution,—and even more so from the Revolution to the adoption of the federal Constitution. The laws were quite uniform to the extent that they required the articles to be examined by officials provided for in the acts. They also prescribed the fees which the inspectors were to receive in the performance of their duties. Naturally, there were radical differences of detail as to the amount of the fee, the extent of the inspector's duty,⁶⁵ and the articles inspected.

The only article (besides lumber), the inspection of which was provided for by law in each of the colonies, was meat, i. e., beef and pork. The packer, as the inspector of beef and pork was ordinarily designated, was required under oath to see that these commodities were properly packed. None could be exported until the inspection had taken place. Even when imported into a colony for reëxportation or for sale, the beef and pork

⁶³ Acts and Resolves of Mass., III, 12; Pa. Statutes, III, 24; Henning, Statutes, V, 164; Col. Laws of N. Y., V, 86; Cooper, Statutes of S. C., I, 55; Laws of N. H. (1726), 149.

⁶⁴ N. Y. Col. Doc., V, 767; Pa. Archives, 4th series, I, 475; Votes of the Assembly of Pa., III, 185, 195, 324, 325; Journals of the Council of N. Y., I, 231; II, 1127, 1308.

⁶⁵ In one instance, at least, goods were to be inspected only on complaint of the buyer.—State Rec. of N. C., XXIII, 55.

were frequently repacked.⁶⁶ Massachusetts provided for the gauging of the casks for beef, pork and other commodities as early as 1641, and New York had a similar provision in 1665. In both cases the cask was to be "London" size, and of well seasoned timber. In the later act, as was the general practice, the gauger was to mark the barrel, as evidence that it had been inspected.⁶⁷

The inspection of fish was provided for in all of the New England colonies, and in New York. The fishing industry developed early in the New England colonies, and was a factor of economic importance to them throughout the colonial period, for it furnished them with a needed staple for foreign trade. The administrative provisions for the inspection of fish were quite similar to those for the inspection of beef and pork.⁶⁸

Timber was inspected at one time or another in every colony. The earlier laws usually regulated in detail the size and quality of staves exported; later acts added shingles, boards, planks and other kinds of lumber. From the very beginning the vast resources of the forests furnished the colonists with a ready and cheap article of export, especially for the trade to the West Indies, Spain and Portugal.⁶⁹ England had admitted it duty free early in the eighteenth century and also placed it among the enumerated articles.⁷⁰ Pennsylvania and the southern colonies did not provide inspection laws for timber until about the middle of the eighteenth century, although

⁶⁶ Col. Laws of N. Y., III, 77; Acts and Resolves of Mass., III, 12.

⁶⁷ W. H. Whitmore, Col. Laws of Mass. (1887), 16; Col. Laws of N. Y., I, 58.

⁶⁸ The reinspection of fish was provided for, if not exported shortly after inspection. Massachusetts also provided a suitable time to dry or prepare fish for export.—Public Rec. of Conn., III, 417; Acts and Resolves of Mass., I, 49; II, 286, 379, 601.

⁶⁹ N. Y. Col. Doc., IV, 645, 678, 724, 825, 853.

⁷⁰ 8 Geo. I, c. 12; 3 and 4 Anne, c. 10.

it was exported from these colonies prior to that period.⁷¹ There is one law on record which specifically provided for the inspection of staves, headings and shingles exported to the Madeira Islands and the West Indies. Such a procedure in the inspection laws was very unusual, even though the legislators doubtless knew the markets for which the lumber from their province was intended and perhaps enacted provisions with that thought in mind.⁷²

Flour and bread were regularly inspected by New York, New Jersey, Pennsylvania and Maryland. Pennsylvania was especially active in the export trade in flour. Unmerchantable flour was not permitted to be exported, nevertheless this prohibition was not always heeded.⁷³ The southern colonies began the inspection of these commodities just a few decades before the Revolution.⁷⁴

The commodity which received the most detailed regulation was tobacco. Inspection laws for tobacco were provided by Connecticut, Pennsylvania, Delaware, and the southern colonies. Pennsylvania, Maryland and Virginia began to secure the inspection of tobacco quite early in their colonial existence, but the laws of the last two mentioned colonies are by far the most important and detailed. Tobacco was the mainstay of Virginia and Maryland, and constituted the greatest single export from the continental colonies.⁷⁵ Inspectors of tobacco were provided by law, and later the southern colonies, except

⁷¹ Bishop, *History of Manufactures*, I, *passim*; Carroll, *Hist. Coll. of S. C.*, II, 129.

⁷² Hening, *Statutes of Virginia*, VI, 233.

⁷³ Pa. Archives, 4th series, I, 475.

⁷⁴ Hening, *Statutes of Virginia*, V, 350; *State Records of N. C.*, XXIII, 485; Cooper, *Statutes of S. C.*, IV, 327; Watkins, *Digest of Laws of Ga.*, 159.

⁷⁵ Beer, *Commercial Policy of England*, 49-52; Brock, in 10th *Census of U. S.*, volume on "Reports on the Productions of Agriculture," 212-225.

Georgia, provided public warehouses to which the tobacco was brought for inspection. Bad or "trashy" tobacco, usually defined in the act, was rejected and was not to be exported, and in some instances tobacco could not be exported in bulk. The cask in which the tobacco was exported was also regulated as to size and even quality of timber. Masters of vessels were to give oath that the tobacco was duly exported and properly inspected. Moreover, Virginia prohibited the sale or shipment of North Carolina tobacco in her territory.⁷⁶

The gauging of casks for liquors was commonly practiced in the New England and middle colonies, but not in the southern colonies. At first they were often made "London" size, but subsequently gauging according to Gunter's rule became the practice.⁷⁷ The necessity of a standard was due to the fraud which could be practiced by exporting liquors in smaller casks, and the consequent effects of such a violation in foreign markets.

Naval stores were early subject to inspection in the southern colonies; they were also inspected in Massachusetts and Connecticut shortly after the parliamentary bounties had been offered upon naval stores.⁷⁸ Governor Cornbury, of New York, at the same time informed the Assembly that he had been instructed by the Queen to recommend suitable acts to make the parliamentary act effective, and accordingly a bill was actually drawn up to prevent frauds and abuses in the exportation of naval

⁷⁶ Col. Rec. of N. C., II, xiv-xvi; Bacon, Laws of Md., 1763, ch. 18; Hening, Statutes of Vir., II, 445; Bruce, Econ. History of Vir., I, 304-308; Hawk, History of N. C., II, 234; Mereness, Maryland, 110-117.

⁷⁷ Col. Laws of N. Y., I, 58; Whitmore, Col. Laws of Mass. (1887), 16; Batchellor, Laws of N. H., I, 197; Public Rec. of Conn., III, 417, X, 129; Acts and Resolves of Mass., II, 49; Acts and Laws of His Majesty's Colony of R. I. (1752), 101.

⁷⁸ Acts and Resolves of Mass., II, 49, 573; Public Rec. of Conn., V, 3.

stores to England.⁷⁹ Their exportation was of some importance in the southern colonies, the bounties proving comparatively ineffective in the northern colonies.⁸⁰ Other articles were inspected at various times in some of the colonies for the same reasons that the commodities already mentioned were inspected; these commodities included butter,⁸¹ flax,⁸² hemp,⁸³ horses,⁸⁴ indigo,⁸⁵ grain and provisions,⁸⁶ leather,⁸⁷ malt,⁸⁸ rice,⁸⁹ and sometimes even commodities in general.⁹⁰

The administrative effects of these various inspection laws cannot be gauged with any degree of accuracy for the policy of inspection as a whole. There was a tendency upon the part of planter and merchant, in the case of some commodities at least, to mix in the unmerchantable or bad portions with the good, or to adulterate articles intended for export; and there is evidence to show that this practice was carried out to some extent. Experience

⁷⁹ Journal of the Council of N. Y., I, 231.

⁸⁰ N. Y. Col. Doc., V, 188, 617; Lord, Industrial Experiments, 67-71, appendix B; Carroll, Historical Collections of S. C., II, 235; McCrady, History of S. C., II, 61; Hawk, History of N. C., II, 270.

⁸¹ State Rec. of N. C., XXIII, 485.

⁸² Ibid, XXIII, 639, 790; Col. Laws of N. Y., V, 361; Watkins, Digest of the Laws of Ga., 159.

⁸³ State Rec. of N. C., XXIII, 639, 741, 768, 790; Watkins, Digest of the Laws of Ga., 159.

⁸⁴ Charter to Penn and Laws of Pa., 164.

⁸⁵ Cooper, Statutes of S. C., III, 718.

⁸⁶ Allinson, Acts of the Assembly of N. J., 71, 381.

⁸⁷ Col. Laws of N. Y., V, 71; Leaming and Spicer, Grants of N. J., 117; Henning, Statutes of Vir., III, 75; Charter to Penn and Laws of Pa., 178; Whitmore, Col. Laws of Mass., 88; Rec. of R. I., IV, 7; Watkins, Digest of the Laws of Ga., 149.

⁸⁸ Acts and Resolves of Mass., II, 447.

⁸⁹ State Rec. of N. C., XXIII, 432, 435, 639, 790; Cooper, Statutes of S. C., III, 497.

⁹⁰ State Rec. of N. C., XXIII, 639, 790; Whitmore, Col. Laws of Mass., 16; Watkins, Digest of the Laws of Ga., 125; Batchellor, Laws of N. H., I, 197.

occasionally proved the inefficacy of these laws, whereupon an amendment was passed to increase the efficiency of the administrative provisions. On the whole, however, the inspection laws must have been very beneficial in preserving the reputation of the colonial products in foreign markets, though at times individual preferences were expressed for the staple from one colony rather than from a neighboring colony. The inspectors were under oath to perform the duties prescribed in the acts, and at times were prohibited from buying the commodities inspected by them. Their compensation was upon the fee system, which was specifically regulated by law. Finally, they were appointed by the Governor and council, justices, and infrequently mentioned in the act itself, yet in the New England colonies it was usual to provide for their election in the towns wherever their services would be required.⁹¹

EMBARGOES.

Purpose and Extent of Embargoes. The direction of commerce by means of inspection laws was but one step removed from the absolute prohibition of the export or even the import of commodities. The embargo legislation of the colonies was regulated by a policy of expediency. Scarcity, protection to home industries and wars were the prime factors which influenced the embargo legislation.

Many of the earlier embargoes were imposed to prevent the exportation of provisions. They were uniformly imposed for a short period—usually about three months—

⁹¹ Bruce, *Econ. History of Vir.*, I, 308; Weeden, *Social and Economic History of N. Eng.*, II, 597, 598; Mereness, *Maryland*, 109, 114-118, 394; Hutchinson, *History of Mass. Bay*, II, 400, 401; Belknap, *History of N. H.*, III, 214; *Archives of Md.*, *Proceedings of Assembly*, 1684-1692, 552, 553; *Pa. Archives*, 4th series, I, 475, 674; and the acts providing for inspection.

and were intended to tide the colony over to the next season.⁹² Even then, occasional objections are heard against these embargoes.⁹³ The crude state of agriculture during the early colonial period, and the lack of efficient means of transportation, made essential the imposition of embargoes of this character.⁹⁴

Embargoes were also imposed early in the career of several colonies to encourage home industries, or to retain within the province commodities which it was deemed desirable to consume. Such motives, however, are not always well defined in specific acts. We have seen already that export duties were occasionally imposed to accomplish approximately the same purpose.⁹⁵ The embargo policy was deemed essential in several instances for hides and skins, for it was considered to be a matter of some importance to encourage the establishment of tanneries.⁹⁶ Virginia enacted several embargoes for hides and skins,⁹⁷ but all those relating to hides were repealed in 1671 for the reason that the benefits which were to have resulted failed to materialize.⁹⁸ The prohibition was again reimposed upon hides and skins, as well as other articles (iron, wool, woolfells) in 1682 since it "would be found profitable for the setting to work many men, women and children in this country which lye idle for want of employ-

⁹² Public Rec. of Conn., V, 417, 420; IV, 16, 150, 157, 160; for an account of the scarcity of provisions in Rhode Island in 1639, see Rec. of R. I., I, 98.

⁹³ Col. Laws of N. Y., I, 86.

⁹⁴ Virginia regulated the price of corn in 1639, and provided that it could not be exported if it exceeded that price. The intent was to prevent any scarcity in the supply.—Hening, Statutes, I, 227.

⁹⁵ Ante, p. 43.

⁹⁶ Acts and Resolves of Mass., I, 431; Hening, Statutes of Vir., II, 493.

⁹⁷ Hening, Statutes, I, 174, 198; II, 185.

⁹⁸ Hening, Statutes, II, 287; Bruce, Econ. History of Vir., II, 480, 481.

ment, and some naked for want of such necessities as might be wrought out of the same. . . .” This view was doubtless exaggerated, but it shows perhaps the motive for attempting to encourage home industry.⁹⁹ In 1662 provision was made for the erection of tanneries in each county; provision was made for the employment of tanners, curriers and shoemakers; and the price of hides and shoes regulated. There is evidence that tanners and shoemakers were an element of importance in that colony.¹ Massachusetts began the same policy as early as 1646, when raw hides and unwrought leather were not allowed to be exported. Tanners had their duties prescribed in 1642.² Besides the prohibitions on the exportation of hides and skins to encourage home industry, we find an occasional act applying to other commodities. About the middle of the 17th century, Virginia also placed several embargoes on iron and wool, but the efforts were unsuccessful in encouraging the former.³ New Hampshire placed an embargo upon iron ore in 1719 in order to aid the establishment of an iron works.⁴ Embargoes were also placed upon grain in one or two instances to have it converted into wheat.⁵ New Jersey in 1694 placed an embargo upon lumber intended for New York, with the view to develop the trade of her own port.⁶

Embargoes were also imposed frequently as a war measure, to prevent supplies from reaching the enemies of the

⁹⁹ Hening, Statutes, II, 493.

¹ Ibid., II, 123; Bruce, Econ. History of Vir., II, 476.

² Whitmore, Col. Laws of Mass. (1887), 64, 88, 205; Bolles, Industrial History, 446, 447.

³ Bruce, Econ. Hist. of Vir., II, 453; Hening, Statutes, I, 488; II, 297, 493. Maryland also placed an embargo on iron and wool in 1663.—Bacon, Laws of Md., ch. 17.

⁴ Laws of N. H. (1726), 139; Belknap, History of N. H., II, 29.

⁵ Public Records of Conn., IV, 166.

⁶ N. Y. Col. Doc., IV, 114; Bishop, History of Manufactures, I, 68.

colonies. These embargoes, imposed upon provisions, munitions of war, and occasionally naval stores and shipping, did not necessarily prohibit all trade; ordinarily it was merely the trade with the enemy which was prohibited.⁷ When imposed upon shipping the intent seems to have been to prevent news of military operations from reaching the enemy, though at the time of the French and Indian War other factors of more importance were also operative.⁸ The home government at times gave instructions to impose embargoes to prevent intercourse with the enemy, the most important by far occurring at the time of the struggle with France for the possession of America.⁹ Of all the embargoes, these were the most difficult to enforce. The instructions from England were based upon the principle that in time of war all commercial intercourse with the enemy was to be entirely prohibited.¹⁰ At the outset of the French and Indian War many of the colonies had imposed embargoes on the trade with the French;¹¹ the lack of uniformity in the scope and time limits of these acts seriously impaired the efficacy of these measures, for trade could and actually was carried on with the French through neutral West India Ports. In response to a circular letter to all the Governors of America, dated October 9, 1756, instructing them to place an embargo on ships, unless supplying British colonies with provisions, Governor Hardy of New York attempted to prevent all indirect trade with the French, and urged

⁷ Col. Rec. of Ga., VIII, 687; Maryland, Proceedings of the Council, 1636-1667, 174.

⁸ N. Y. Col. Doc., V, 259.

⁹ Rec. of R. I., V, 546; Beer, British Colonial Policy, 75; N. Y. Col. Doc., VII, 162, 346, 356; Kimball, Corres. of Pitt with Colonial Governors, I, 19, 48; N. J. Archives, 1st series, VIII, pt. ii, 254; Col. Rec. of Ga., VII, 766; Col. Rec. of Pa., VIII, 38.

¹⁰ N. Y. Col. Doc., VIII, 255.

¹¹ Pa. Archives, 4th Series, II, 362, 363.

the Governors of the neighboring colonies to do likewise, but in this he was unsuccessful.¹² Evasions of the embargoes were by no means infrequent, and protests were heard against their extension or enforcement. The Assembly of Pennsylvania, in 1757, even considered the three months' embargo on shipping to secure seamen for military operations, as illegal, and insisted that the embargo should be removed immediately to prevent any further distress to trade. They asserted that the embargo was "taken off in New England, Maryland and Virginia, and the Continuance of it here can answer no good Purpose whatsoever." Governor Denny at once sent the remonstrance to Lord Loudoun, at whose instance the embargo had been laid. The embargo was removed a few weeks later.¹³

Administration of the Embargo Acts. It is essential to touch at least upon the method of imposing the embargo. The usual method of imposing the embargo was by the legislative body of the colony; the act fixed the duration of the embargo, and the commodities which were affected. When, in 1757, the Governor of Pennsylvania had proclaimed an embargo at the instance of Lord Loudoun, without first obtaining the consent of the Assembly, it was declared to be "illegally laid."¹⁴ In several of the colonies, the Governor in council was permitted to impose embargoes, whenever "necessary" or "expedient." These prohibitions were sometimes imposed at a time when the Assembly was not in session.¹⁵

¹² Rec. of R. I., V, 546; N. Y. Col. Doc., VII, 162, 215; Pa. Archives, 4th Series, II, 637, 638.

¹³ Votes of the Assembly of Pa., IV, 713-715; Pa. Archives, 4th series, II, 813, 834.

¹⁴ Votes of the Assembly of Pa., IV, 714.

¹⁵ Col. Rec. of Ga., VII, 766; Public Rec. of Conn., V, 417, 420; Hening, Statutes of Vir., IV, 221; Toward the end of 1754, instructions had been issued to the English naval and military commanders to stop "illegal correspondence" and to prevent the "dangerous Prac-

tices" by which the French were supplied with provisions and warlike stores. These instructions were illegal, since war did not formally exist at that time. The Earl of Hillsborough later asked the attorney and solicitor generals for their opinion upon the validity of an embargo to be imposed upon the colonies, whereby provisions and warlike stores could not be exported except to ports in the British dominion. The reply was that no decision covering this case had been made, but the Crown had exercised this right in time of actual war and might "make preparations which are legal (sic) justifiable by the occasion."—N. Y. Col. Doc., VIII, 255; Beer, Br. Col. Policy, 76, 77.

CHAPTER IV

TONNAGE DUTIES

Purpose of the Tonnage Duties. Thus far we have discussed the commercial policy from the commodity side of colonial commerce. We shall now consider it from the point of view of trade or navigation. During the colonial period trade was practically symbolical of navigation or shipping interests, for inland transportation was comparatively undeveloped and of minor importance. This phase of the commercial policy of the colonies will be dealt with as follows:

1. Tonnage Duties.
2. Port Regulations.

The tonnage duties which were among the earliest provided by the colonies, were imposed quite generally throughout the colonies. New Jersey was probably the only colony which did not impose tonnage duties during the colonial period.¹

The chief purpose of the tonnage duties was to provide a source of revenue for the defense of the colonies, and subsequently, for lighthouses and other purposes. Encouragement to shipbuilding and trade were also factors of

¹ There are no indications in the laws of Delaware that a tonnage duty was imposed by that colony. The earlier laws of Pennsylvania, on the subject, referred to ships from Delaware as from the "lower counties." See, e. g., Pa. Statutes at Large, II, 384. Scharf refers to an act passed in 1706, imposing a duty of a quarter of a pound per ton on all vessels (except war vessels) owned by inhabitants residing within the river and bay, otherwise the duty was one-half pound of powder.—Hist. of Del., I, 129.

importance, particularly in the New England colonies.²

The earlier acts, usually called "castle duties" or "powder money," were imposed to provide revenue for the forts of the colonies, and in general the revenue was applied to that end until about the middle of the eighteenth century. Pirates and the settlers from other colonizing powers gave the English colonies sufficient cause for apprehension. The revenue derived from the tonnage duties was usually sufficient for the fortifications, and was generally kept as a separate fund. The forts at the entrance to the harbor were also utilized to see that the navigation acts and regulations were properly enforced.

About the middle of the eighteenth century, it became the general practice to use the revenue from tonnage duties for lighthouses, and occasionally one or two other specific objects (as beacons and buoys, and seamen's hospitals).³ At the time the lighthouses were established, it was frequently found that the revenue was insufficient.⁴ Hence the rates were often increased, or money was borrowed and the duties were applied to the ultimate extinguishment of the debt. Thus Pennsylvania provided a duty of 6d. per ton on vessels (with certain exceptions) in 1764, in order to erect a lighthouse at Cape Henlopen, and the Commissioners were authorized to borrow £5,000, which was ultimately to be repaid by the tonnage duties. Two years later another £2,000 was borrowed and an additional duty of 6d. per ton was imposed to pay off the debt.⁵

² Cf. Jour. of Council of N. Y., I, 433.

³ Cooper, Statutes of S. C., II, 610; III, 402.

⁴ N. H. Province Papers, VII, 9, 10, 70, 71, 280, 281, 288, 296; Col. Rec. of Ga., VI, 293; X, 744; Osgood, American Colonies I, 481. Public Rec. of Conn., XIV, 191, 216; Rec. of R. I., III, 487.

⁵ Pa. Statutes at Large, VI, 372, 609-611; VII, 40, 373. The Board of Trade commended the motives of the former act, yet urged its repeal because it provided a penalty on his Majesty's customs officers clearing out vessels which did not have a certificate showing that the duty had been paid. The Board asserted that the act was

The records do not permit us to ascertain with sufficient accuracy the duties which were collected in the several colonies.⁶ Nor were the accounts always kept properly. Revenue was the chief object of these duties, consistent with a due encouragement of trade and shipbuilding by means of exemptions, and was perhaps of greater importance in the southern colonies on account of the few exemptions which were provided.⁷

The early tonnage duties provided generally for payment in powder—hence the designation “powder money.” Some of the early acts, however, provided for the payment of the duties in powder or money at a fixed rate, at the option of the master of the vessel. Under such an arrangement it is only natural that the merchants and shipmasters would take advantage of the act, and pay the cheapest rate. The date of transition to specie payments varied widely in the several colonies, and on occasions, the powder duty was insisted upon after specie payment had been introduced.⁸

Tonnage Duties and English Ships. The same principle which we have noted in the duties on English goods and slaves was applied to English ships. Naturally, the

“evidently calculated and must necessarily operate to control a constitutional officer of the Crown in the execution of those duties which the laws of trade and navigation require of him.” The Board believed that the act went beyond the constitutional authority of the colony, since it interfered with the English acts of trade and navigation. Nevertheless both acts were allowed to continue. Cf. *Journal of the Council of N. Y.*, I, 371, 372.

⁶ The most complete account of the revenue derived from tonnage duties (and even that is inadequate) is in Hill, *Tariff Policy*, 18-23.

⁷ *N. Y. Col. Doc.*, V, 599, 607; VII, 908; *Journal of the Council of N. Y.*, I, 520; *Votes of the Assembly of Pa.*, II, 251, 269, 291; Hill *Tariff Policy*, 23; Ripley, *Financial History of Vir.*, 80, 81; Robinson, *History of Taxation in N. H.*, 66, 67; Carroll, *Historical Coll. of S. C.*, II, 225, 226.

⁸ *Acts and Resolves of Mass.*, I, 525, 586, 621, 737; *Journal of the Council of N. Y.*, II, 1810.

English merchants complained against these violations of the acts of trade and navigation, and the Board of Trade in many instances recommended that these acts should be rejected.

Maryland, in 1704, levied a tonnage duty of 3d. per ton on vessels trading to that colony, unless built in, or owned wholly by the inhabitants of the province. This was one of the laws against which the merchants of London made complaint to the Board of Trade, trusting that they would be "supported in the same freedom and privileges of trade with the inhabitants of this or any other colony." The act, however, was not disallowed.⁹ A similar act passed by Massachusetts in 1718 was rejected by the Crown, and the subsequent acts of that colony exempted English vessels whenever its own vessels were exempted.¹⁰ Other colonies had similar experiences, but these cases are limited chiefly to the charter colonies. The tonnage duty of seven and a half ounces of plate (or its equivalent in bills of credit) imposed by New York in 1716, exempted vessels built in the colony or owned by its inhabitants, as well as vessels in the coasting trade to Massachusetts, Rhode Island, Connecticut and New Jersey, when owned by the inhabitants of the respective colonies. Objections were offered by the Board of Trade, but the Assembly was permitted to remedy the complaints before final action should be taken on the bill, which the Assembly met by exempting English vessels. In a report to the Governor, however, the Assembly stated that "British Vessels, as well as others, paid a Duty of Tonnage . . . in 1709, which continued to be paid without any Objection or Observe made on that Act, by the then Board of Trade. . . .

⁹ Chalmers, *Revolt of the Colonies*, I, 387, 388; Md. Archives, *Proceedings of Assembly, 1704-1706*, 360.

¹⁰ Hutchinson, *History of Mass.*, II, 204, 209; Chalmers, *Revolt of the Colonies*, 13, 14; *Acts and Resolves of Mass.*, II, 79, 111, 140.

That in Virginia, they pay such a Duty, and that British shipping in most of the Plantations, are no more than others exempted, from paying a Duty according to their Tonnage for Powder Money; they will think favourably of us, for subjecting them to the same Duty, as their Fellow Subjects paid for the support of his Majesty's Government, which we were humbly of Opinion, would as well justify such an Imposition, as the Support of his Majesty's Garrisons and Fortifications." ¹¹

Colonial legislation subsequent to the first few decades of the eighteenth century did not collide much with English commercial interests along this line.¹²

Exemptions to Home Shipping. Exemptions for the purpose of encouraging shipbuilding, and especially of hampering trade as little as practicable were frequently provided. The most important of these exemptions were granted to the shipping owned or built in the legislating colony. This was practically true of the New England colonies, where shipbuilding was an important industry.¹³ A brief summary of the acts exempting home shipping will perhaps indicate their extent and significance.

In New Hampshire, the laws regularly exempted the vessels of the province from tonnage duties, with only a few exceptions.¹⁴ A similar policy was carried out in Massachusetts until 1715, after which date coasting and fishing vessels paid a duty or tax annually, or for each

¹¹ Col. Laws of N. Y., I, 898, 1010; Journal of the Council of N. Y., I, 433, 435.

¹² Cf. Chalmers, *Revolt of the Colonies*, II, 32-34, 120.

¹³ Journal of the Council of N. Y., I, 433, 435; Pa. Archives, 4th series, II, 903, 904; Votes of the Assembly of Pa., V, 9, 10; N. H. Province Papers, II, 77-84; Weeden, *Economic and Social History of New Eng.*, I, 375-378; Bishop, *History of Manufactures*, I, chaps. III and IV.

¹⁴ Batchellor, *Laws of N. H.*, I, 490; N. H. Province Papers, IV, 291, 292, 608, 609; VII, 280.

clearance.¹⁵ Connecticut also exempted her own shipping from tonnage duties until 1757 at which time provision was made for a duty of 6d. on vessels owned by her inhabitants when bound to ports beyond the limits of Halifax and Philadelphia, and 3d. within those limits. Vessels of non-residents were required to pay 1s. per ton. In 1760, however, that colony again exempted her own vessels when "bound from the port of New Haven westward," but at the same time provided duties on her vessels according to the size of the vessel and the port of call. Vessels of non-inhabitants paid double the duties.¹⁶ In Rhode Island exemptions were accorded to her own shipping in 1697, but six years later the exemption amounted to one-half of the duty, or more when one-half or more of the vessel was owned by the inhabitants of the colony.¹⁷ Subsequent to 1744, vessels of Rhode Island were required to pay tonnage duties or a specified tax upon clearing. The necessity for revenue for a military expedition in 1744, and later for the lighthouse on Beaver Tail Island made this course necessary.¹⁸

¹⁵ Acts and Resolves, I, 34, 164, 274, etc.; II, 14, 51, 79, 111, 141, etc.; III, 85, 188, 275, etc.; Whitmore, *Laws of Mass.* (1887), 69, 140, 271.

¹⁶ On her vessels bound for any port between Portsmouth and Philadelphia the duties were as follows: 10-30 tons burden, 1s. 6d.; 30-50 tons, 2s.; 50-70 tons, 2s. 6d., and in proportion for larger vessels; when bound beyond these limits the rates on vessels of 20-50 tons burden were 4s. 6d.; 50-100 tons burden, 6s., and in proportion. The act of 1774 increased the rates for vessels bound for a port beyond Philadelphia or Portsmouth as follows: 20-50 tons, 6s.; 50-70 tons, 6s. 6d.; 70-90 tons, 9s.; 90-100 tons, 10s. 6d., and in proportion for larger vessels.—Public Rec. of Conn., XI, 10, 468; XIV, 216.

¹⁷ Col. Rec. of R. I., III, 277, 487. In 1704, owing to the abundant supply of powder which was secured under the previous tonnage act, R. I. made further exemptions. Vessels built in New England, coming to Rhode Island to be fitted out, before undertaking a regular trading voyage, were exempted; also coasters or other vessels bringing in grain or provisions from New England were exempted.—*Ibid.*, 504.

¹⁸ In 1744 the duty was 3d. per ton on coasting vessels, and 6d. on

In the middle colonies, the Assemblies of New Jersey and Delaware did not impose tonnage duties. The vessels built or owned by the inhabitants of the two other middle colonies—New York and Pennsylvania—were usually exempted from tonnage duties. New York exempted vessels from a duty of 2s. per ton in 1709, when owned principally by inhabitants of that province, although there appears to have been some opposition to the law.¹⁹ In 1714 vessels built or wholly owned by the inhabitants of the province (as well as vessels trading directly from Great Britain) were exempted from the duty of seven and a half ounces of plate, or its equivalent in current bills of credit. A clause making the British customs collectors liable for clearing a vessel for which the duty had not been paid were opposed at the debate in the provincial council, but it was ultimately included. In the reënactment of the law, English vessels were not included in the exemption, whereupon the Board of Trade, as we have seen, protested, and caused the Assembly to amend the act. Vessels owned by the inhabitants of Great Britain were exempted, as were also vessels built and owned by the inhabitants of New York, though not vessels merely owned by these inhabitants. The distinction was made to encourage shipbuilding in the province, but was not maintained for any length of time.²⁰ Clarke, in an address to the Assembly in 1736, asserted that shipbuilding had been neglected in New

all others; in 1749 the rate was 10s. for each clearance of a coasting vessel; in 1754 it was 15s. which was again increased the following year. The rate was reduced to 3s. in 1766; and to 18d. two years later, but in 1771 it was increased again to 2s.—Col. Rec. of R. I., V, 393, 476; VI, 566; Acts and Laws (1745), 292; Acts and Laws (1752), 66; Acts and Laws (1767).

¹⁹ Col. Laws of N. Y., I, 675; Journal of the Council of N. Y., I, 324. For specific exemptions, see *ibid*, 411, 417; Col. Laws of N. Y., I, 912, 913, 918–920.

²⁰ Col. Laws of N. Y., I, 801, 847, 898, 1010; Journal of the Council of N. Y., I, 371, 372, 433, 434. The vessels owned by inhabitants

York, though in several of the neighboring colonies it was flourishing and indeed formed an important item in the returns to Great Britain. Three years later he reverted to the same subject, and emphasized the necessity of a bounty to shipping to counteract the relatively high prices demanded by the shipbuilders in the province.²¹ From 1763 until the Revolution, a duty of 3d. per ton was imposed on all vessels, to provide revenue for the lighthouse at Sandy Hook.²² The earlier laws of Pennsylvania exempted the vessels owned by its inhabitants from tonnage duties; and even a duty of 1s. 6d. per ton, to provide revenue for a war vessel in 1757, exempted coasting vessels. Lieutenant-Governor Denny feared the act might hamper trade too much. Certain Philadelphia merchants also urged its repeal for the same reason, and also because the act did not provide an equitable distribution of

of New York were practically all exempted in 1720. Col. Laws of N. Y., II, 18.

The preamble to the act of 1734 is worthy of notice in this connection. "Whereas it is found by experience That ever since a Duty of Tonnage heretofore Layd on Vessels Trading into and out of this Colony, has been Discontinued, the Number of our own Shipping has Decreased to Such a Degree that at present the Vessels of other Ports are become almost our only Carriers. . . .

"And Whereas it is Evident That Vessels Built or Owned here are of far Greater Benefit to the Shipwrights in particular & to the Inhabitants in General, than a much greater Number of Strangers coming Hither for Freights, Because the Money Earned by them is carried out of the Colony, Whereas the Earnings of our own Vessels and of those that Navigate them Remains and Circulates Amongst us.

"And Whereas Nothing can Contribute more to Retrieve the Languishing State of our Trade, than the Encrease of our own Shipping and Navigation." . . . Col. Laws of New York, II, 843, 844.

²¹ Journal of the Council of N. Y., I, 661, 731, 732.

²² Col. Laws of N. Y., V, 741, 860, 923, 956, 1039. Whaling vessels while engaged in the whaling or coasting trade, and coasting vessels under eighty tons burden owned by the inhabitants of, and trading within the limits of New Hampshire and Cape Henry, were exempted from this duty. Cf. Journal of the Council of N. Y., II, 1578, 1579.

the tax.²³ In 1764, shallops and other small craft trading in the river and bay, and along the coast between Sandy Hook and Indian River were exempted from the duty of 6d. per ton on vessels to provide for a lighthouse at Cape Henlopen.²⁴

The southern colonies, on the whole, permitted fewer exemptions to home shipping than the northern colonies. Maryland, however, went as far as any colony and exempted her own shipping from 1650 to the Revolution. Disputes arose from the act of 1661 (providing a duty of half a pound of powder and three pounds of shot, or its money equivalent) which the solicitor-general of the home government decided was intended for the private use of the proprietor. In 1739, it was contended by the Assembly, yet unsuccessfully, that an act of 1704 entitling the proprietor to a perpetual tonnage duty of 14d. was null, or if it were in force, then part of that duty should be used for military defenses of the province.²⁵ The earliest acts of Virginia (1631-1655) did not exempt the ships of her inhabitants from tonnage duties.²⁶ Upon the enactment of a new law in 1661 Virginia vessels were not exempted from the half pound of powder and three pound of shot (which could be commuted to 1s. per ton). In

²³ Pa. Archives, 4th series, II, 903, 920, 961, 962; Votes of the Assembly of Pa., V, 9, 10; Col. Rec. of Pa., VIII, 30, 31, 42.

²⁴ Pa. Statutes at Large, II, 384, III, 166, 238; etc. Several of these acts were apparently not submitted to the Crown for approval, at least not until they had expired by statutory limitation. Others were disallowed.—Ibid, II, 543, 544, 551; III, 440, 448; Chalmers, *Revolt of the Colonies*, I, 383.

²⁵ Md. Archives, *Proceedings of the Council*, 1687-1693, 421, 422, 454; *Proceedings of the Assembly*, 1637-1664, 418; *Proceedings of the Assembly*, 1700-1704, 211, 214, 241, etc.; Mereness, *Maryland as a Proprietary Province*, 89-91, 291-293, 303, 304.

²⁶ Henning, *Statutes*, I, 176, 218, 229, 247, 301, 312, 402. The duty was repealed in 1660, so that Virginia owners (of which there were probably not many) did not benefit much from this exemption.—Ibid, II, 9.

accordance with the other means which were employed to encourage industries in that province, Virginia owners were shortly after exempted from this duty. In 1680, however, the same amount of shot and powder, or 15*d.* sterling per ton was required of every ship entering Virginia, and it was not until 1710 that Virginia vessels appear to have been again specifically exempted. When the lighthouse at Cape Henry was established shortly before the Revolution, Virginia shipping was again exempted. The earlier exemptions were due in part to a desire to encourage shipbuilding.²⁷ North Carolina exempted vessels built or owned by inhabitants of the colony in 1715, and again in 1754 and 1759.²⁸ In South Carolina the acts did not provide exemptions until 1698, when it was proposed to encourage shipbuilding by exempting such vessels from the tonnage duty.²⁹ The attempts in 1716 and the few years thereafter have already been noted.³⁰ The three acts of the royal province prior to 1738 imposed duties on all ships for the purpose of securing revenue for defense and the improvement of navigation, but in that and subsequent years coasting vessels, trading entirely within the province, were exempted from the tonnage duties.³¹ The only exemption provided by Georgia in its series of duties from 1755 to the Revolution was on decked pettiaguas, or rice

²⁷ Hening, *Statutes*, II, 134, 272, 466, 490; VIII, 539; Bruce, *Economic History of Vir.*, II, 351, 434-436. Virginia ships were presumably exempted from the 4*d.* per ton duty for the lighthouse, since vessels from Maryland were exempted.

²⁸ *State Rec. of N. C.*, XXIII, 45, 401, 505. The act of 1715 also exempted any vessel from the tonnage duties which imported four hundred bushels of salt. Special duties were imposed upon all vessels in 1752 and later to provide a revenue to facilitate the navigation of the ports of entry.—*Ibid.*, 375, 588.

²⁹ Cooper, *Statutes*, I, 42, 82; II, 150.

³⁰ *Ante*, p. 24.

³¹ Cooper, *Statutes*, III, 491, 588, 685.

boats of fifty barrels capacity and upwards—and even these boats were required to pay an annual tax.³²

In general, vessels of the legislating colony were frequently exempted from tonnage duties, particularly during the period prior to the middle of the eighteenth century, when the increasing necessity of revenue for lighthouses and means of defense made it essential in several instances to impose tonnage duties on home shipping. The chief purpose of the exemption was the desire or perhaps even the necessity of placing few restrictions upon trade, though the encouragement to shipbuilding was also an important factor.

Exemptions to Ships of Other Colonies. The exemption of vessels of the neighboring colonies from tonnage duties was also determined chiefly by the desire to aid trade—practically the coasting-trade. These exemptions were common in New Hampshire, Massachusetts, New York and Pennsylvania, i. e., in trading colonies; while in only a few instances were these exemptions accorded by the southern colonies. A brief analysis will indicate the extent of these exemptions, which were not, in most instances, so important as those to home shipping.

New Hampshire exempted the vessels of Connecticut and Rhode Island from the powder duty in 1686,³³ and those of Massachusetts in 1693.³⁴ In the act of 1718 for-

³² The annual tax amounting to 1£ 5s. sterling in the act of 1755. Ships paid 1£ 7s. 6d. per voyage; a snow, brig, "polacre or sactia," 1£ 2s. 6d.; a sloop or schooner, over eighty tons burden, 17s. 6d.; under eighty tons, 15s.—Acts of the General Assembly, 1755-1774, 52. Cf. Jones, History of Ga., I, 485.

³³ Batchellor, Laws of N. H., I, 125.

³⁴ ". . . Sloops or Boats, That trade a longe the shore, to be free from paying of Powder Money that comes into this Province for Traffick from any part or Harbour on this sid Con'ectticutt."—Batchellor, Laws of N. H., I, 566. This provision was reënacted in 1731, but it is not likely that freedom from tonnage duties was continued for any length of time, owing to the boundary disputes

eign vessels above thirty tons burden coming "from over the sea," not owned chiefly by the inhabitants of the province, were required to pay a tonnage duty of 2s. or one pound of powder. No mention is made in this act of exemptions to coasting vessels.³⁵ Massachusetts provided exemptions in her first act (1645) imposing tonnage duties.³⁶ A duty of 6d. per ton was imposed except on English vessels and "any Vessel of our Confederates, or any parts where our Ships are free of customs, Imposts and Taxes." In 1694 (though not in the acts for the two previous years) coasting vessels from New England, New York and East or West Jersey were exempted from the tonnage duty, but in its place they were required to pay a maximum duty of 6d. per ton twice per annum. The payment of this duty for each voyage would have been too burdensome on the small vessels which were engaged in the coasting trade, and thus would have imposed a rather severe restriction upon that trade. Hence the provision was maintained until the Revolution.³⁷ Rhode Island did not accord exemptions to vessels of neighboring colonies until the middle of the eighteenth century.³⁸

during the next decade.—N. H. Province Papers, IV, 608, 609; Robinson, *History of Taxation of N. H.*, 66.

³⁵ Acts and Laws (1726), 64. A special exemption was granted in 1700 to vessels laden with corn, provisions and hay.—Batchellor, *Laws of N. H.*, I, 674.

³⁶ Whitmore, *Col. Laws of Mass.* (1887), 69. These vessels were, however, to pay a tax of 6s. 8d. for the maintenance of the forts if under two hundred tons burden, and 10s. if over two hundred tons. The provision exempting confederates of the colony was re-enacted in 1679.—*Ibid.*, 271; cf. *ibid.*, 140.

³⁷ Acts and Resolves, I, 34, 101, 164, 274, 482, 526, etc.; III, 85, 1007, etc.; IV, 84, 981, etc. Pennsylvania was added to the list in 1701, and Nova Scotia in 1762. In 1695 vessels bringing in provisions were exempted from the tonnage duties.—*Ibid.*, I, 227.

³⁸ In 1704 vessels coming to Rhode Island to be fitted out, or importing grain, were exempted from tonnage duties.—*Col. Rec. of R. I.*, III, 504.

Even subsequent to that period, it provided lower duties or taxes rather than exemptions. The act of 1744 provided a duty of 6d. per ton, and 3d. per ton on coasting vessels, for the use of a fort. In 1749 a duty of 18d. old tenor per ton was imposed on vessels to provide revenue for a lighthouse. Coasting vessels, (i. e., vessels trading to Massachusetts, Connecticut, New York and Philadelphia, or importing spars, planks and boards from New Hampshire, or provisions from Maryland or Virginia) were to pay 10s. for each clearance, while fishing vessels, and sloops for fetching wood, stone and sand were exempted from all tonnage duties.³⁹

The earlier laws of New York exempted the vessels of neighboring colonies. The act of 1709 imposed a duty of 2s. per ton on vessels of colonies other than Massachusetts, Rhode Island, Connecticut and New Jersey, and furthermore exempted such vessels of other colonies, whenever one-half or more were owned by inhabitants of New York. Although the duties were increased subsequently, coasting vessels were still exempted. In 1734 coasting vessels owned wholly by persons residing within the limits of Cape Henlopen and New Hampshire were exempted from the payment of tonnage duties of seven and a half ounces of plate, or 3s. specie. The same exemption was even granted in the 3d. per ton duty imposed in 1763 and afterwards for the lighthouse at Sandy Hook.⁴⁰ Pennsylvania exempted vessels trading from West Jersey and Delaware in 1710, though the act was rejected by the Crown three years later.⁴¹ Tonnage duties were not im-

³⁹ The tax on coasting vessels was changed several times prior to the Revolution.—Acts and Laws (1745), 292; Acts and Laws (1752), 66; Col. Rec. of R. I., III, 487; V, 279, 393.

⁴⁰ Col. Laws of N. Y., I, 675, 779, 801, 898; II, 16, 843, 867; III, 754; IV, 370, 741, 766; V, 280.

⁴¹ Pa., Statutes at Large, II, 385, 543. Vessels of the lower counties comprising Delaware were placed on an equal footing with those of Pennsylvania in 1698, when they paid 4d. per ton; all

posed for three decades prior to the passage of an act in 1758 providing revenue for a provincial ship-of-war. By this act, shallops and other small vessels trading within Delaware River and Bay, and along the coast from Sandy Hook to the Indian River were exempted from the duty of 1s. 6d. per ton. This was the act which, as we have seen, aroused the opposition of certain merchants, because the duty was not only burdensome but was inequitably imposed. Nevertheless it was continued until 1760, and the surplus revenue was devoted to piers in the Delaware.⁴² A lottery proving inadequate to provide revenue in 1763 for a lighthouse at Cape Henlopen, a 6d. per ton duty was imposed with the same exemptions as in 1758.⁴³

The southern colonies did not grant many exemptions to vessels of neighboring colonies. Mutual exemptions from the 4d. per ton for a lighthouse at Cape Henry were provided by Maryland and Virginia in 1773.⁴⁴ North Carolina, in 1715, exempted all vessels from the tonnage duty when importing four hundred bushels of salt.⁴⁵

This brief survey indicates the relative importance of the exemptions from tonnage duties to home shipping rather than to that of the neighboring colonies. To have exempted the latter class of ships, in addition to home shipping would have meant the giving up of tonnage duties, from which revenue for the use of forts, lighthouses and other aids to navigation was secured.

other vessels paid 8d. per ton.—Charter and Laws, 1682–1700, 268. The acts of 1718 and 1721 did not grant any exemptions.—Pa., Statutes at Large, III, 166, 238.

⁴² Pa., Statutes at Large, V, 409; VI, 72, 173.

⁴³ Ibid, VI, 302, 372. A like exemption was granted when an additional duty of 6d. was imposed in 1766; and in the later acts of 1771, 1773 and 1775.—Ibid, VII, 42; VIII, 125, 278, 423.

⁴⁴ Hening, Statutes of Vir., VIII, 539, 652; Laws of Md. (in Charlemagne Tower Collection), Dec. 23, 1773.

⁴⁵ State Rec. of N. C., XXIII, 45; repealed 1748, chap. 10. The duty consisted of 1 pound of powder, 4 pounds of shot and twelve flints for every three tons of the vessel.

CHAPTER V

PORT REGULATIONS

Vessels trading with the colonies were required to enter at ports which were established either by the home government or, as was usually the case, by the colonies themselves through the charter or the instructions to the Governor.¹ The various regulations to insure due entry of vessels and to prevent smuggling; the registration of vessels; the wharfage dues; the port fees; the regulations concerning seamen; the pilotage regulations—all constituted quite an important and essential body of commercial regulations affecting the navigation and trade of the several colonies.

NAVIGATION REGULATIONS.²

Ports of Entry and Port Control. Without exception ports were established for “entering” vessels trading to

¹ 7 and 8 Wm. III, c. 22, sec. 10; Acts and Resolves of Mass., I, 336, note; N. J. Archives, 1st series, II, 177, 178, 180–185. Public Rec. of Conn., IV, 374. See also charters in Poore, Charters and Constitutions.

² The navigation regulations were actually more comprehensive than will appear in the discussion in this chapter. Hence a word or two here on certain regulations may not be amiss.

Attention should be called to the maritime codes adopted in three of the New England colonies. Those of Massachusetts and Connecticut are identical and embrace 27 sections, relating to shipping and seamen. Rhode Island, in 1647, ordered the enforcement of “Sea Laws, otherwise called the Lawes of Oleron” for the benefit of seamen.—Whitmore, Col. Laws of Mass., 93–100; Col. Rec. of R. I., I, 151.

Acts relating to the casting of ballast in harbors and navigable

the colony. The numerous bays, rivers and creeks in the northern colonies made smuggling comparatively easy. The legal trade was, however, limited to a few ports, varying somewhat with the amount of trade, at which the British and the provincial customs and naval officers were

waterways were enacted by most of the colonies. A penalty averaging £10 was imposed for violations.—See, e. g., Batchellor, *Laws of N. H.*, I, 33; Whitmore, *Col. Laws of Mass.*, 9; *Col. Laws of N. Y.*, I, 167.

Quarantine regulations were passed by practically all of the colonies especially in the southern colonies. It was frequently the duty of the pilot to inquire after the health of the passengers and crew of an inbound vessel. None was supposed to pass the fort at the entrance of the port until the quarantine regulations had been met. An act of South Carolina (1752) even provided a ten-day quarantine upon vessels in any event when bound from Africa. The length of the quarantine period was generally left for determination to the Governor.—Cooper, *Statutes of S. C.*, III, 127, 771; IV, 78; *State Rec. of N. C.*, XXIII, 651, 677, 827, 956; XXV, 328; *Laws of New Castle, Kent and Sussex upon Delaware*, 67; *Col. Laws of N. Y.*, III, 1071, 1141.

The facilitation of trade and navigation was secured to some extent by the regulations affecting the wages and the limitation of the credit of seamen. The maritime codes mentioned above contain numerous provisions relating to the duties and wages of seamen. Disputes about the payment of seamen's wages were frequently to take precedence, in the lower courts, to delay shipping as little as possible, or until the judge had first approved of the suit as provided in 1751 by South Carolina. The credit of the seaman for which inn-keepers and other persons could hold him liable, was usually limited to five shillings, unless a written consent of the master of the vessel authorized a larger credit.—Cooper, *Statutes of S. C.*, III, 735; *Acts and Resolves of Mass.*, I, 142; *Col. Laws of N. Y.*, I, 345, 866; Batchellor, *Laws of N. H.*, I, 80, 571, 691; *Col. Rec. of N. C.*, II, 758, 762.

In several colonies the Assemblies regulated the wharfage, dockage and storage dues. Massachusetts regulated wharfage dues on various classes of goods in 1647, but did not continue this practice long. Delaware began to regulate wharves in 1772, and Pennsylvania, through the Board of Port Wardens, about a decade earlier. New York, Georgia and South Carolina made more comprehensive provisions. Owing to disputes arising from rates established by owners of wharves in New York City, the Assembly regulated the rates for certain wharves in 1734, according to the size of the ves-

located. Most of the southern colonies provided for a much larger number of ports of entry. Nor is the reason far to seek. The trade to the southern colonies was frequently transacted by vessels ascending the rivers and creeks practically to the landing of the plantations. Yet a larger number of ports meant more administrative machinery and more expense than was necessary for only a few ports of entry.

In 1663, acting on instructions from the privy council, sel. This act was re-enacted in more detail ten years later, and then continued to 1770. A comprehensive law, regulating wharfage and storage charges was passed by South Carolina in 1768 and amended ten years later. The legislation of Georgia in this direction began in 1764. In this act and its supplements, a harbor-master was established at Savannah, and wharfage charges were provided for ships (except coasting vessels) and goods. Provision was also made for storage charges, and mooring vessels in Savannah harbor.—Whitmore, *Col. Laws of Mass.*, 156, 157; *Laws of Del.* (1797), I, 481; *Col. Laws of N. Y.*, II, 847; III, 437, 993; *Cooper, Statutes of S. C.*, IV, 286, 435; *Watkins, Digest of Laws of Ga.*, 159.

Sea passes (or Mediterranean passes as they were sometimes called), were of importance to British vessels trading to Mediterranean ports, preventing molestation by the Barbary pirates, and were regulated by the Admiralty. To secure the protection of Great Britain, abuses were committed in granting passes, and in consequence the privy council issued new instructions in 1722. The naval officer or other proper officer of the customs in the colonies was required to exercise due care in granting passes, while the Governor was enjoined not only to cancel and transmit those which had expired to the Admiralty Office, but to transmit an exact account of all such passes issued. Bond was required to unload in a British port before the pass could be properly issued. Changes were proposed or made subsequently, as in 1730 and 1765, to correct abuses which still continued.—*Pa. Archives*, I, 177, 180, 182, 242, 256, 258, 282, 439; IV, 243, 622; *Beer, British Colonial Policy*, 7 note 2.

The regulation of immigrants and convicts, and the acts imposing penalties on persons cutting adrift or taking small boats, come to a certain extent under navigation regulations, but will not receive further consideration here.

No important changes of principle occurred during the period prior to 1789 along the lines of the legislation just outlined in this note.

Massachusetts provided for the enforcement of the navigation act by establishing three custom districts where bonds for the enumerated commodities were taken, seizures made of vessels loading these commodities without giving bond or presenting a certificate, and accounts kept of ships and their masters.³ Connecticut, as early as 1659, provided nine ports of entry for liquors subject to duty. In 1702 the act provided naval offices in eight ports (corresponding closely to those established in the earlier law) for the proper entry or clearance of vessels, while the naval officer received a fee of 1s. for entering or clearing vessels.⁴

Among the provisions of other northern colonies in establishing ports of entry, probably the most interesting and important was the attempt to make Perth Amboy a port. The authorities in New York insisted upon the payment of duties and the entering and clearing at New York of vessels trading to East Jersey.⁵ Governor Dongan, in a report on the state of the province of New York in

³ Whitmore, *Laws of Mass.* (1887), 139, 140; *Col. Rec. of Mass.*, IV, pt. 2, 73. A law enacted shortly after 1668 gave the "country Treasurer" the power to appoint collectors in the several ports. No custom-house was established, nor were the acts of trade and navigation strictly enforced. Edmund Randolph found this to be the case. The committee for Trade and Plantations recommended that the Lord Treasurer appoint customs officers at Boston and elsewhere in New England to insure the enforcement of these acts. The General Court of Massachusetts, in accordance with such instructions, provided in 1677 that these acts should be strictly observed, and five years later a naval office, under the complete control of the colonial authorities, was established—"in opposition to the royal collector" according to Randolph. Even then the acts of trade were not strictly observed, nor was it perhaps the intention to do so.—Whitmore, *Col. Laws of Mass.*, 70, 139, 140, 258; Hutchinson, *History of Mass.*, I, 269; Randolph (pub. of Prince Society), I, 49, 50, 81, 111, 153, 182; III, 70-73, 341.

⁴ *Public Rec. of Conn.*, I, 332; III, 307, 308; IV, 374, 397.

⁵ For the dispute concerning the establishment of a port at Elizabethtown, see Osgood, *American Colonies*, II, 187-190.

1687, regarded the establishment of a port at Perth Amboy as very "inconvenient" for the trade of his province, and suggested annexation to New York as a solution. The proprietors of East Jersey objected to such a procedure, and were really desirous of encouraging free trade by the establishment of free ports. That same year an order in council instructed Governor Dongan to permit vessels to enter and clear at Perth Amboy directly, without first entering New York. A proviso was, however, added to the effect that he should appoint a customs officer to collect "the same customs & Imports as are usually paid at New York." Opposition was manifested to the collection of the duty in East Jersey, and in two decisions by law officers of the Crown it was held that the customs duties could be imposed only by act of Parliament or by "Some Assembly that Actes as a parliament according to the Rules and Government of the place." The two Jerseys were legally distinct from New York, and therefore were not liable for the duties collected by that province in East or West Jersey. Nevertheless, it was decided by an order in council, issued November 25, 1697, that duties should be paid to New York by vessels trading in the Hudson River, for the law officers of the Crown had decided that the Duke of York had no power in his grant to establish ports, and therefore could not convey such a power to Lord Berkeley or Sir G. Carteret. Bellomont thereupon issued a proclamation requiring vessels to first enter and clear at New York. Five days later (May 30, 1698) Governor Basse of East Jersey also issued a proclamation establishing Perth Amboy as a port, because the Commissioners of the Customs of England had previously instructed Edmund Randolph to consider Perth Amboy and Burlington as ports of entry. The matter was finally taken to Westminster Hall and decided in favor of Governor Basse. In

surrendering their government, the proprietors insisted upon the right to establish ports.⁶

As the result of an instruction, the Governor of Maryland in 1668 issued a proclamation limiting the number of ports of entry to twelve, most of which were on large estates.⁷ Since this, and other proclamations were inadequate, a bill was passed in 1683 providing thirty-one ports, which number was increased to fifty-seven by the time of the Revolution of 1689.⁸ In 1747 an act for the inspection of tobacco provided for the establishment of eighty wharves, as well as warehouses and scales. The expenses of inspection and equipment were certainly a drawback, but the advantages derived from the improved quality of the tobacco exported outweighed it. Of the disadvantage of numerous ports, Governor Sharpe wrote in 1762 that "As the Merchants there (Philadelphia) can always load their vessels at once they can afford to give more for the Cargoes than Merchants in this Province can give, because ours must be a long time collecting a Cargo for even a small Vessel there being no Town or Port in Maryland where any considerable quantity of Country Produce can be purchased at once or together. . . . The only means to remedy the evil would be to restrain the whole Trade of the Province to one or two Ports a Scheme not likely to be relished by the Assembly. . . ." ⁹ The

⁶ N. Y. Col. Doc., III, 389, 428; N. J. Archives, first series, I, 524-527, 535, 537, 540; II, 136-138, 178, 179, 200, 218-221, 227, 228; Randolph (pub. of Prince Society), V, 166, 167.

⁷ Md. Archives Proceedings of the Council, 1667-1687, 31, 32.

⁸ Md. Archives, Proceedings of the Assembly, 1678-1683, 352, 488, 492, 540; etc. These acts were repealed in 1692. Another act of this nature was passed in 1706, but was disallowed by the Crown because no restriction was imposed on the place of loading vessels.—Mereness, Maryland as a Proprietary Province, 414.

⁹ Bacon, Laws of Md., 1747; Md. Archives, Corres. of Gov. Sharpe, III, 72.

unsuccessful attempts of Virginia to make Jamestown the only port of entry demonstrated the impracticability of a few ports in a plantation colony. Numerous attempts were made after the middle of the seventeenth century to create towns in certain counties, or along navigable rivers of that colony, and to make them ports of entry. These acts were also practically unsuccessful and were even opposed at times by English merchants, as in the so-called "Act for Ports" in the code of 1705—repealed by proclamation five years later. These efforts also affected the revenue, for evasions were easier. As in Maryland, the shipment of tobacco from the plantation wharf was preferred, and subsequently was changed by shipment from public warehouses.¹⁰ The difficulties of navigation, and the lack of good ports, kept considerable trade (except the coasting trade) from North Carolina.¹¹ South Carolina and Georgia each had one good port, and ports of entry established in these colonies were limited to a small number, as in the northern colonies.

By the parliamentary acts of trade and navigation the Governor became the agent of the home government, besides acting as the chief executive of the province. The act of 1660 required him to take an oath to enforce the provisions of the act, particularly with reference to bonds for enumerated goods under penalty of removal from office.¹² His duties were given in more detail in the act of 1663, and he could authorize persons to act for him.¹³ Other duties were imposed upon the Governor by various

¹⁰ Hening, Statutes, II, 135, 172, 471; III, 53, 108, 404, 541. An excellent account of the efforts of Virginia to establish towns and ports during the seventeenth century is contained in Bruce, *Economic History of Vir.*, II, chap. XX.

¹¹ Col. Rec. of N. C., II, xii, xiv-xvi; 775; Hawk, *History of N. C.*, II, 269, 270.

¹² 12 Car. II, c. 18, sec. ii, xix.

¹³ 15 Car. II, c. 7, sec. vii.

acts of Parliament, but the most notable act in this respect was the one which aimed to prevent frauds and regulate abuses in the plantation trade, passed in 1696. By this act even Governors of the proprietary provinces had to be approved by the Crown.¹⁴ The instructions to the Governor also provided for the due observance of the acts of trade and navigation. As a matter of fact, they were not always carefully observed in the various colonies.¹⁵ The administration of the acts, however, was usually left in the hands of the collector of the customs, and the naval officer, men who frequently acted as deputies for persons appointed through the Board of Trade, and whose principals preferred to reside in England. These officials secured their income from fees, which the colonial assemblies claimed they could regulate. If such officials found it more to their interest, as some of them did, not to enforce the acts of trade and navigation, it would have been difficult to check them. On the other hand, if the laws were enforced too strictly to please the merchants, opposition was aroused and charges were brought against the zealous official.¹⁶ Admiralty courts were also to be provided to assist in the proper enforcement of the acts of trade and navigation. Randolph urged their establishment. In a memorial, submitted in 1696, the proprietors of Carolina,

¹⁴ 7 and 8 Wm. III, c. 22, sec. iii-v, xv.

¹⁵ There is much material in colonial records showing that the acts of trade and navigation were not duly observed.—See e. g., Randolph (pub. of the Prince Society), I, 49, 50, 78, 182; III, 70-73, 341-351; V, 151-160; Bernard, *Select Letters on the trade and government of America*, 1-4; N. Y. Col. Doc., *passim*; Carroll, *Historical Coll.* Cf. C., II, 232; Weeden, *Econ. and Social History of N. Eng.*, II, 557, 660.

¹⁶ Votes of the Assembly of Pa., III, 287, 288; Chalmers, *Revolt of the Colonies*, I, 269, 272-274; N. Y. Col. Doc., IV, 591. Occasionally a special official like Randolph, the collector, surveyor and searcher for New England, or surveyor-general Quarry, was sent over.—Randolph (pub. of the Prince Society), I, 47-52; N. Y. Col. Doc., V, 199, 329.

Pennsylvania, the Jerseys and the Bahamas, and the agent of Connecticut, stated that they were "willing and ready" to establish these courts, which had not been done previously, since the act of 1663 permitted breaches of the navigation acts to be tried in the common law courts, and it would have been expensive to establish separate admiralty courts. The establishment of vice-admiralty courts soon followed, and since they decided cases without juries, they were not well liked in the colonies.¹⁷

The administrative machinery of the colonies for the enforcement of their several acts of trade and navigation was in part the same, and in part different from that provided by the home government. Nor was there any uniformity throughout the various colonies. In general the earlier acts, i. e., during the seventeenth century, did not provide for many officials. A collector usually performed these duties. Massachusetts in 1645 provided a chief officer or "Customer," and deputies, known as searchers and waiters; while Connecticut designated nine customs officers in 1659 when naval offices were established.¹⁸ In New York, at the time when Andros was in control, there was a collector, appointed by the Duke of York, and in addition a controller, surveyor and searcher. Goods, whether imported or exported, were to be taken to the weigh-house in New York (a Dutch institution retained under English rule, as for example in the act of 1693), and the duties there determined.¹⁹ The early laws of Pennsylvania contained very meagre administrative regulations. In the act of 1700 the Governor was to appoint the officers, who were moreover to search vessels and houses whenever it was suspected that goods were not properly customed.²⁰ South

¹⁷ N. J. Archives, 1st series, II, 133, 134; Randolph (pub. of the Prince Society), V, 117-124, 130-132; Beer, *British Col. Policy*, 249.

¹⁸ Whitmore, *Col. Laws of Mass.*, 68; *Public Rec. of Conn.*, I, 332.

¹⁹ N. Y. Col. Doc., III, 309, 310, 335; *Col. Laws of N. Y.*, I, 322.

²⁰ *Pa. Statutes at Large*, II, 108.

Carolina, by the act of 1691, provided a receiver of the customs who received the duties and also cleared vessels, while the secretary issued certificates for the exportation of skins and furs. A controller was further provided in the more elaborate act of 1703 increasing the tariff schedule. He was to aid in searches and seizures of goods which were not properly entered.²¹ The duty of the powder receiver was to collect the tonnage duty. The Virginia and Maryland Assemblies recognized the collectors for the home government as legal officers, and distinguished between "country dues and parliamentary customs." In Maryland the proprietor appointed his officials, and was enabled to choose practically his own method of securing the tobacco duty, but in practice it was collected by the naval officer. The early acts of Virginia merely provided for the appointment of the officials by the Governor or by the county sheriff during a vacancy of the Governor's position,—the collector of port charges, the secretary, and the collectors authorized to administer the acts of trade.²² This brief outline of the administrative machinery, while not exhaustive, was added to according to the needs of the province, but without much of a tendency towards a greater degree of uniformity.²³

The point to be emphasized is the lack of any really efficient administrative organization and control to collect the customs or carry out the various navigation regulations.²⁴ During the eighteenth century, the Assembly as-

²¹ Cooper, *Statutes of S. C.*, II, 42, 64, 71, 73, 200.

²² Chalmers, *Revolt of the Colonies*, I, 126; Hening, *Statutes of Vir.*, I, 534, 535; II, 130-132; Md. Archives, *Proceedings of the Assembly*, 1637-1664, 418; *ibid*, 1684-1692, 463.

²³ An account, yet not complete, is given by Goss of the customs administration of Massachusetts, New York and Virginia.—*History of Tariff Administration*, 12-23. See also Carroll, *Historical Coll. of S. C.*, II, 221-223. The answers of the Governors to the Board of Trade also give in many cases the administrative personnel.

²⁴ Randolph (*pub. of the Prince Society*), II, 167.

sumed a more exclusive power of regulation over these officials, in part by the audit of accounts, in part by the appointment of collectors or other persons, but chiefly by the control which it exercised over appropriations including the regulation of fees. South Carolina carried the policy of appointment by Assembly farther than most of the colonies. In 1721 it provided for the appointment, among others, of the treasurer, comptroller and powder receiver. The Governor was subsequently instructed not to assent to any law for the appointment of public officers.²⁵

The very lack of efficient administration made it difficult, aside from other factors, to enforce not only the laws relating to navigation regulations, but practically all of the trade regulations, particularly the tariff acts. We have evidence that the parliamentary acts of trade and navigation, while adhered to in the main by the merchants, were not always strictly enforced. The evidence for the colonial acts is by no means so apparent. The internal evidence (i. e., the attempts to make the laws more effectual by giving for example the collector greater powers of search and seizure; by imposing larger penalties upon shipmasters for failing to enter their vessels before breaking bulk or for the understatement of the tonnage of the vessel and permitting the surveyor or carpenter to ascertain the true tonnage of the vessel by actual measurement) furnishes us only a part of the answer. If the merchant found it to his interest to violate the parliamentary acts of trade and navigation, with or without the connivance of the officials, there was no reason why the same procedure could not be carried out for the provincial laws, though not to the same degree—except in connection with the embargoes in time of war. Governor Sharpe, for

²⁵ Pa. Archives, 4th series, I, 535, 536; II, 920; Cooper, Statutes of S. C., III, 148; Carroll, Historical Coll. of S. C., II, 221; Greene, Provincial Governor, 167, 180, 186-188.

example, more than hints at illegal trade of Pennsylvania merchants who "have for a long time been Endeavouring to get an Inlet into this Province, and as I have been informed they have Transported by Land Sundry goods Particularly Rum, which has been brought in great Quantities without notice of application to any Office."²⁶

Some of the colonies provided commissions or boards for regulating the navigation of the port. Their purpose, however, was somewhat different from that which established ports of entry. The commissions were empowered to provide beacons, buoys, piers and other improvements to navigation in the ports under their supervision. Hence their purpose was to facilitate and improve navigation to encourage trade.

In North Carolina the policy of facilitating the navigation, under the direction of commissioners, was commenced in 1723.²⁷ Great difficulties had been experienced in bringing ships over the bars and shoals. As a result, a commissioner was appointed by the Governor, and allowed £250 the first year to mark out the channels from Oeacock Inlet. Similar regulations were provided for other ports in the colony, and in addition the commissioners were to secure sufficient pilots to navigate the ships to the various ports.²⁸ Pennsylvania created a Board of Port Wardens in 1766²⁹ for the port of Philadelphia. Their earlier duties were restricted to the regulation of pilots and will be discussed later.³⁰ In 1773³¹ they were authorized to borrow £12,000

²⁶ Md. Archives, Corres. of Gov. Sharpe, III, 99. N. Y. Col. Doc., III, 305; IV, 516, 517; VII, 271, 272; Carroll, Historical Coll. of S. C., II, 232; Votes of the Assembly of Pa., III, 287, 288; Corres. of Gov. Sharpe, I, 92; III, 118, 160, 161, 182; Randolph (pub. of the Prince Society), III, 70-76, 84-86; V, 22-24, 35-52, 139, 151-160; N. J. Archives, 1st series, VII, 134.

²⁷ State Rec. of N. C., XXV, 194.

²⁸ Ibid, XXIII, 127, 375, 475, 483, 506.

²⁹ Pa. Statutes at Large, VII, 19.

³⁰ Supra, p. 120.

³¹ Pa. Statutes at Large, VIII, 264.

to erect piers and buoys, and in addition they provided for the maintenance of the lighthouse at Cape Henlopen. Two years later they were able to report that they had discharged the debts due for building the lighthouse at Cape Henlopen, that they had completed several piers and formed a harbor of refuge at Fort Island, as well as erected three piers at Reedy Island. A further loan of £6,000 was thereupon granted to them for erecting several piers and "for the improvement of the commerce of the province."³² South Carolina also provided commissioners with duties similar to those of her northern neighbors. In 1746³³ five commissioners were appointed to erect beacons and buoys near Georgetown and Winyaw harbors. Their most important duty, however, seems to have been the supervision of the pilotage to these ports. Similar legislation was provided for the other ports of the colony. There was no regular policy of port control in the other colonies;³⁴ temporary commissions were created from time to time in order to provide for some specific improvement,—usually for a lighthouse.

Registry of Vessels. To provide for the proper collection of the tonnage duties, as well as to furnish a legal record of identification, a vessel had to be registered. The registers were issued as a rule by the Governor or the customs officer. As a navigation regulation, the ship's tonnage was of the greatest practical importance in connection with the tonnage duties. The usual method of collecting these duties was to require the tonnage of the vessel from the master. Although this statement was rendered under oath, it was not uncommon to understate the

³² Pa. Statutes at Large, VIII, 427; Acts of the Assembly of Pa., 465.

³³ Cooper, Statutes of S. C., III, 678.

³⁴ Wardens were to examine damaged goods brought in. Col. Laws of N. Y., IV, 173.

true tonnage of the vessel, and thereby reduce the amount of duties which were paid. In fact, it was customary to state approximately two-thirds of the true tonnage of the vessel to the powder receiver or other proper officer. In comparing the trade between the United States and Great Britain before and after the Revolution, one writer, who based his statistical evidence on information from George Chalmers, accounted for the decrease in the number of ships prior to the Revolution in large part to "the imperfect manner of taking the tonnage which, in order that the master might be charged a less sum for pilotage and lighthouse duties, was generally estimated at about one-third less than it really was."³⁵

The acts imposing the tonnage duties sought to remedy any understatement of the registered tonnage of vessels by empowering the naval officer, surveyor, or other officer mentioned in the act, to go on board the vessel, and make a measurement in accordance with the rules laid down in the act of the legislating colony. The prevalent practice in measuring a decked vessel was to multiply the length, breadth (amidships) and depth together, and to divide the product by ninety-five.³⁶

PORT FEES.

Extent and Policy of Port Fees. The Governors were authorized, with the advice of their council, to regulate the fees of public officers in the colonies.³⁷ The Assemblies

³⁵ Burnaby, *Travels through North America*. (N. Y., 1904.) Appendix No. 2, 165. Cf. also Report of committee of Privy Council (1791), p. 15.

³⁶ There were naturally variations from this rule. Thus, the act of New York passed in 1734 multiplied three-fourths of the length of a double-decked vessel by the breadth and depth and divided by ninety-five.—Col. Laws of N. Y., II, 843.

³⁷ See instructions to governors.—Col. Rec. of N. C., III, 103, 151; Col. Rec. of Ga., VII, 62; N. H. Province Papers, II, 66, etc.

exercised the right much more frequently than the Governor, for it dealt with a fiscal question over which the Assembly generally managed to secure control.³⁸ There are numerous instances, especially in New Jersey, in which the Governor, by proclamation or ordinance, regulated the fees.³⁹ The Assembly of New Jersey presented a memorial to Lord Cornbury in 1707 claiming the right to help regulate fees, since its denial was directly repugnant to the Magna Charta and even to the Governor's instructions. The fees established by the Assembly were rejected by the Crown, and a list proclaimed by the Governor.⁴⁰ Complaints of a similar nature were also made in other colonies.⁴¹ Subsequently, in 1757, the Board of Trade held that the instruction of the Governor of North Carolina "which is also given to other Governors has never been considered as operating to prevent the (regulation of fees) by Act of Assembly, on the contrary acts have been passed in almost all the Colonies for this purpose, many of which have been confirmed by the Crown." Those which were repealed provided "improper" fees, according to complaints made to the Board.⁴²

Whether established by the Governor in council or as was the general practice by the Assembly, fees were

³⁸ Osgood, *American Colonies*, II, 362-365.

³⁹ N. H. Prov. Papers, I, 454, 600; N. J. Archives, 1st series, V, 338, 379; XIV, 260, 388; Md. Archives, *Proceedings of the Assembly*, 1637-1664, 162-164; *ibid*, 1666-1676, 176; *ibid*, 1700-1704, 401; N. Y. Col. Doc., V, 170.

⁴⁰ N. J. Archives, 1st series III, 176, 327; V, 338.

⁴¹ N. Y. Col. Doc., V, 296, 298, 359; Col. Rec. of N. C., III, 151; Col. Laws of N. Y., I, 623.

⁴² Col. Rec. of N. C., V, 750; Raper, *North Carolina*, 193, 194. The Board of Trade drafted an additional instruction to Governors in 1764, requiring them to transmit copies of fees, because "frequent complaints have been heretofore made, that exorbitant Fees have been demanded and taken in the public offices in several of our Colonies. . . ."—N. J. Archives, 1st series, IX, 440, 593, 608; N. Y. Col. Doc., VII, 889, 921; Pa. Archives, 4th series, III, 344.

granted to many of the public officers in the several colonies, and indeed formed the principal, if not the sole source of income of at least those connected with the customs administration or the port regulations. Many acts were passed and fees were provided as soon as the various customs and naval offices were created. Among those receiving port fees in most of the colonies mention may be made of the collector of the customs, the naval officer, the Governor and the Secretary of the province, and the comptroller.⁴³ The amount of fees to these officials varied in the several colonies; in general the number of officials became more numerous toward the Revolution.⁴⁴ Owing to

⁴³ The list varied somewhat in each colony, depending chiefly upon the extent of its tariff and shipping legislation. The powder receiver's fees, while strictly speaking port fees, were not included as a rule in the general acts regulating the fees of public officials. He usually received a small percentage on the powder money collected. Nor must we fail to include the pilotage fees in the list of port charges. Among other officials may be mentioned the surveyor, searcher and treasurer, included by South Carolina in 1716, and in some instances in other colonies.—Cooper, *Statutes of S. C.*, III, 414.

⁴⁴ To show the scope of these port fees, and at the same time the general trend of the colonies concerning these fees, we may take the law enacted in 1748 by New Jersey. For signing the ship's register the Governor was to receive 10s. if the ship was over 20 tons burden, and 5s. if under that burden. In several of the colonies the fee was graduated according as the vessel was undecked or decked, but the law of New Jersey followed the usual custom. Furthermore, the other colonies usually required the Secretary to sign his name to the register, in addition to that of the Governor, and for this function he received the same fee as did the Governor. The Governor, under this law also received a fee of 10s. for a "sea Pass," which permitted the vessel to sail out to sea, past the fort at the entrance of the harbor; and, finally, a fee of 12s. for a bill of health. The sea pass was generally issued by the Secretary in the other colonies; while the bill of health was usually issued in other colonies by the health officer where there was one; otherwise, by the collector or naval officer.

The naval officer's fees in this New Jersey act provided for the payment by the shipmaster of 6s. if the vessel came from Europe or the West Indies, or cleared to that destination, and 3s. if from "New England, etc." The policy of the other colonies differed somewhat in this respect, for there the naval officer's fees were based on the

the difference in the value of the money in the several colonies, it is difficult to make any noteworthy comparisons of the fees actually provided. The Assembly of North Carolina claimed that the fees in that colony were certainly much higher than in Virginia, which the Governor denied in a paper sent to that body in April, 1731.⁴⁵ In an attempt to provide a bill of fees in 1745, a conference committee of the two houses in Maryland was constituted. The members from the lower house insisted that the fees established in Virginia and Pennsylvania should be used as a guide, to which the members of the upper house refused on the ground that the fees in Pennsylvania were paid in money at the time of the service without any expense for collection, while in Virginia the larger popu-

tonnage, as well as the destination of the ship. The collector's fees for entering or for clearing vessels from Europe or the West Indies was 15s.; and from New England, 10s. A comparison of this act with the acts of the other colonies, as regards fees of the naval officer and collector, shows us that the act of New Jersey was somewhat unusual in this respect. The general practice was to allow the same fees to the naval officer for clearing or entering a vessel, as to the collector. The reason for a divergence from this policy was due probably to the fact that the naval officer received a compensating income from the fees for issuing permits and certificates.

The permits and certificates of the act of New Jersey, however, do not by any means represent a complete list of those required in other colonies. In this act the naval officer received 18d. for a permit to load or to unload a cargo; 10s. for the register of a vessel trading to foreign ports, and 7s. 6d. for a coasting vessel; 2s. for recording the register; 2s. 6d. for endorsing it; 3s. for a cocquet; 5s. for a bill of stores; 7s. 6d. for a bill of health; 2s. 6d. for bond for enumerated goods; 1s. 6d. for cancelling it; and finally, 2s. 6d. for a permit of a vessel to go to and from New York or Pennsylvania. Among the certificates for which fees were demanded by other colonies, mention may be made of the certificate issued to show that bond had been entered according to the provisions of the Navigation Act; a certificate for naval stores; and also fees for each oath administered, and for filing bond to observe all navigation regulations of the colony, as well as observing all embargoes.—Allinson, *Acts of the Assembly*, 160.

⁴⁵ Col. Rec. of N. C., III, 157, 265, 267.

lation made a comparison undesirable.⁴⁶ Georgia in 1755 took the fees established in South Carolina as a basis, reducing all of them by ten per cent.⁴⁷ During the years immediately preceding the Revolution some of the fees at least were considered to be too high and in consequence attempts were made to lower them, as in the case of Rhode Island in 1764.⁴⁸ The following year an act of Parliament forbade the colonies to reduce the fees of the collector or any other official of his Majesty's customs below the rates prevailing September 29, 1764.⁴⁹ With the Revolution, some of the fees were discarded.

In some instances, instead of establishing separate fees for the various administrative acts required in entering and clearing a vessel, it was the practice to charge a definite sum for all services rendered. Virginia had such a law in 1679, which allowed the collector 15s. for vessels under twenty tons burden and 30s. for those over twenty tons, "in full payment for his fees of entering, clearing, license to trade, and for takeing such bonds as are by law enjoyned to be given and taken at the entering and clearing of ships or other vessells, tradeing thither." Such a method of settling fees, however, was unusual.⁵⁰ Coasting vessels trading within the colony were frequently exempted, especially those of about thirty tons burden or less since they were not usually supposed to have dutiable

⁴⁶ Mereness, Maryland as a Proprietary Province, 385, 386.

⁴⁷ Col. Rec. of Ga., VII, 62-87.

⁴⁸ Col. Rec. of R. I., VI, 413; Arnold, History of R. I., II, 252.

⁴⁹ 5 George III, c. 45, sec. xxvii; cf. N. J. Archives, 1st series, IX, 440.

⁵⁰ Hening, Statutes of Vir., II, 443. North Carolina granted the comptroller 7s. 6d. in 1722 for entering and clearing a ship and all other fees relating to his office; Pennsylvania, in 1752, provided a fee of 27s. to the collector and naval officer "in full for all necessary papers and other charges"; and Delaware similarly provided a fee of 30s. for the naval office in 1769.—State Rec. of N. C., XXIII, 179; XXV, 196; Pa. Statutes at Large, V, 161.

goods which would have to be entered, and the regular port fees would have proved very burdensome upon them on account of their numerous short trips from port to port.⁵¹ Furthermore, vessels owned in the province were occasionally required to pay only a portion of the fees. Pennsylvania in 1710 provided that vessels owned in that province should pay three-fourths of the fees granted to the secretary, collector, naval officer and comptroller.⁵² In 1717 Maryland provided that vessels of her inhabitants should pay one-half the regular fees, while Virginia made a similar provision in 1748.⁵³

PILOTAGE.

Appointment and Duties of Pilots. It is a noteworthy fact that the southern colonies as a group provided for pilotage more generally and systematically than the middle or northern colonies. The apparent reason is to be found in the nature of the settlements of these districts. Those in the north were usually along the sea coast, or on rivers easy of access to the sea; those of the south were more scattered and usually further inland, and could be reached only by going through tortuous and shifting inlets and shallow rivers. Moreover, since most of the colonial shipping was owned in northern ports, it is probable that

⁵¹ See, e. g. Watkins, *Digest of the Laws of Ga.*, 194; *Pa. Statutes at Large*, VII, 42; VIII, 125, 278; *Acts and Resolves of Mass.*, I, 164, 274; *N. H. Province Papers*, III, 103 104.

⁵² Reënacted subsequently.—*Pa. Statutes at Large*, II, 331; III, 96.

⁵³ Bacon, *Laws of Md.*, 1717, chap. I; Hening, *Statutes of Vir.*, VI, 94. Massachusetts in 1698 provided a fixed sum per annum in lieu of the fees for entering or clearing coasting vessels of the New England colonies, the Jerseys, New York or Pennsylvania.—*Acts and Resolves*, I, 335, 336. It was disallowed by the Crown in 1700, for it established seven ports of entry, which were considered too many, besides being an apparent limitation on the power of the commissioners of the customs to establish ports for the enumerated commodities.

the masters of such vessels knew the northern waters thoroughly and were not so dependent upon pilots as at the southern ports.⁵⁴

Pilotage laws were enacted in the several colonies with the probable exception of New Hampshire, Rhode Island, New Jersey and Maryland. There was no uniformity in the appointment of pilots throughout the colonial period. The early legislative acts usually provided that the Governor should appoint the pilots, as in New York and South Carolina.⁵⁵ The general practice, however, was to provide a special or permanent commission which examined the candidates for pilots.

The duties of pilots were generally prescribed by legislative enactment, although the commissions were often allowed to make the minor regulations concerning the examination of candidates, the stationing of pilot boats, etc.⁵⁶ The regulation of the pilotage fees was almost invariably retained in the hands of the legislative body. The real function of the boards or commissions, therefore, was to act as an administrative body. Upon boarding a vessel often the first duty of the pilot was to inquire about the health of the crew and passengers, in accordance with the quarantine regulations.⁵⁷

⁵⁴ Hawk, *History of N. C.*, II, 164, 165, 269-271; Bruce, *Econ. History of Vir.*, II, 352; Pa. Archives, 4th series, I, 475.

⁵⁵ Virginia, in 1660, provided for the appointment of pilots by the Assembly.—Hening, *Statutes*, II, 35.

⁵⁶ Col. Laws of N. Y., IV, 173; Cooper, *Statutes of S. C.*, III, 225, 678, 713; IV, 431; Hening, *Statutes of Vir.*, 490; VII, 580.

⁵⁷ It would be manifestly impossible to give any details of the fees actually established in the various acts. One or two acts may be cited here by way of illustration. The fees in South Carolina, in 1723, were as follows: for piloting a vessel into Cooper River before Charleston, or vice versa, if under six feet draught, 1*l.* 10*s.* proclamation money; seven feet, 2*l.*; eight feet, 2*l.* 10*s.*; nine feet, 3*l.*; ten feet, 3*l.* 10*s.*; eleven feet, 4*l.*; twelve feet, 4*l.* 10*s.*; twelve feet and a half, 5*l.*; thirteen feet, 5*l.* 10*s.*; thirteen feet and a half, 6*l.*; fourteen feet, 6*l.* 10*s.*; fourteen feet and a half, 7*l.*; fifteen feet, 8*l.*;

A Board of Port Wardens was established in Philadelphia in 1766 as the result of attempts to secure efficient pilots for that port.⁵⁸ The Board was empowered to examine persons who desired to become pilots, but in no case was it allowed to make a person a "first-rate" pilot until he had served a regular apprenticeship. The Board was also given the right to make other regulations concerning pilots, except to fix fees. A Master and "three or more" Wardens were appointed for the port of New York, under the act of 1757.⁵⁹ Their duties were similar to those prescribed by Pennsylvania nine years later, except that the pilot was not required to serve an apprenticeship. Similar regulations were provided even earlier in several of the southern colonies. Commissioners were appointed in 1751 in North Carolina to provide for the examination and supervision of pilots on Cape Fear River; while in the following year the commissioners for the ports of Bath, Beaufort, and Roanoke were given similar powers.⁶⁰ South Carolina provided seven commissioners for regulating pilotage and issuing licenses for the port of Charleston in 1734.⁶¹ In Georgia commissioners were established in three districts in 1762.⁶² Commissioners do not appear to have been provided in the other colonies having

sixteen feet, 10£.; seventeen feet, 12£. 10s. Choice was given for payment in bills of South Carolina at current rates.—Cooper, Statutes, III, 225. In New York (1731) the following rates were enacted between New York and Sandy Hook between April first and October first: vessels drawing ten feet, 3£.; eleven feet, 3£. 15s.; thirteen feet, 4£. 10s.; fourteen feet, 5£.; fifteen feet, 6£.; sixteen feet, 7£.; seventeen feet, 8£.; eighteen feet, 9£. During the winter months twenty shillings were added.—Col. Laws of N. Y., II, 700.

Not all of the fees in other acts were as comprehensive as in the case of these just cited.

⁵⁸ Pa. Statutes at Large, VII, 19.

⁵⁹ Col. Laws of N. Y., IV, 173.

⁶⁰ The State Records of N. C., XXIII., 355, 375.

⁶¹ Nicholas Trott, Laws of the Province of S. C., 610.

⁶² Watkins, Digest of the Laws of Ga., 75.

pilotage legislation, to supervise the examination of candidates and the duties of pilots.⁶³

Compulsory and Optional Pilotage. The rates imposed on vessels for pilotage were usually according to the draught of the vessel.⁶⁴ Moreover, these rates were as a rule compulsory, although the master of a vessel was often required to pay only half the regular rates upon refusing the services of a pilot. Of the colonies having pilotage laws, Delaware, North Carolina, Pennsylvania and Virginia did not provide for optional pilotage.⁶⁵ In the other colonies, the exemption of vessels from pilotage was not practiced to any extent except in New York.

In that colony, optional pilotage was permitted as early as 1694,⁶⁶ on "all such sloops as belong to this Province and are Coasters upon the main of North America which is to be understood to Extend from Pemiquid to Virginia inclusive." In 1726⁶⁷ it was further provided that masters of vessels capable of piloting their own vessels in or out of the port of New York, were not required to employ pilots. In 1757, vessels under fifty tons in the coasting trade between New York and southward to Cape Fear were exempted from pilotage.⁶⁸ In 1775, however, pilotage was made compulsory.⁶⁹

Georgia permitted optional pilotage to coasting vessels

⁶³ In 1762, Virginia provided that the courts should appoint examiners for pilots.

⁶⁴ Cooper, Statutes of S. C., III, 225; IV, 431; Col. Laws of N. Y., II, 700, 949; III, 678, 753; Hening, Statutes of Vir., VII, 580. In one colony (that of New York) higher rates were also imposed for piloting vessels during the winter season than in the summer season, as at present.

⁶⁵ The act of Pennsylvania of 1766 applied to vessels of more than fifty tons burden.

⁶⁶ Col. Laws of N. Y., I, 324.

⁶⁷ Ibid, II, 302. Reënacted at various dates: II, 700, 949; III, 678, 753.

⁶⁸ Ibid, IV, 173. Continued, IV, 278, 337, 523, 652.

⁶⁹ Col. Laws of N. Y., V, 746.

in 1762, and in the event that they took a pilot on board, the regular fees were collected.⁷⁰ South Carolina desired to ease the port charges on coasting vessels trading from port to port within the colony in 1738, and hence exempted such vessels from the necessity of taking pilots on board.⁷¹ Ten years later "decked periaugas" and coasting vessels were exempted when "coming or going coastwise"—a provision which was subsequently reenacted.⁷²

The practice of exempting coasting vessels, especially those owned or trading within the colony, was due to several causes. The masters of such vessels were familiar with the harbors and rivers; their vessels were comparatively small and could more readily enter a port; and it was not deemed expedient to burden the shipping with too many dues for fear of injuring the trade of the colony.⁷³

⁷⁰ Watkins, *Digest of the Laws of Ga.*, 75.

⁷¹ Cooper, *Statutes of S. C.*, III, 491.

⁷² *Ibid.*, III, 712.

⁷³ The reason for providing pilotage is well expressed in an act of New York, which stated that ". . . this Act is Calculated and Intended more immediately for the advantage and preservation of strangers than Vessels belonging to this Port the masters of which are many of them able and Experienced Pilots and Require little or no Assistance."—*Col. Laws of N. Y.*, IV, 337.

CHAPTER VI

COMMERCIAL POLICY FROM THE REVOLUTION TO 1789

COMMERCIAL LEGISLATION BY THE STATES.

Embargoes During the Revolution. The outbreak of the Revolution severed the political and commercial relations with England, which had existed for more than a century. For the next six or seven years the vicissitudes of war gave little time or opportunity for trade, except in munitions of war and the necessities of life.¹ The commercial restrictions which had been imposed upon the colonies had narrowed their trade chiefly to England, hence during the continuance of war there was little opportunity to create new markets. Moreover, the presence of British war vessels on our coast and in the paths of trade made these efforts extremely hazardous. The shipping of the several states, however, began to find profitable, although risky, employment by preying upon English commerce.²

War brought into prominence expedients to secure and to retain provisions, necessities of life and munitions of

¹ Attempts were made to open up trade with French merchants and others on the continent of Europe—fish, rice and tobacco were perhaps the chief articles exported—but the principal trade was with the West Indies.—N. H. State Papers, VIII, 564; Deane Papers, II, 295; Weedon, Economic and Social History of N. Eng., 773-775, 779, 780. Sparks, Dip. Corres. of Amer. Revol. (1829), XII, 418.

² Ibid, 770 et seq. Hildreth estimates the number of British vessels captured during the first year at 350, valued with their cargoes at five million dollars.—History of the U. S., III, 177.

war. Some encouragement was given to industries,³ but the main emphasis was placed upon embargoes and upon laws prohibiting engrossing or forestalling. The first Congress unanimously resolved that after December first of that year goods of Great Britain or Ireland should not be imported into the colonies, and by a further resolution, all commodities except rice and tobacco, should not be exported after September 10, 1775, to Great Britain, Ireland or the West Indies unless the grievances of the colonies were redressed before that time. Non-intercourse was to be extended to any colony which did not adhere to the association. In the meantime war broke out, and the resolution was changed to permit the importation of munitions of war.⁴

Embargoes were imposed in each state, usually for comparatively short periods of time, by the Assembly or the Governor;⁵ yet unlike those imposed during the colonial period, it became essential at times to provide for their enforcement through committees of safety.⁶ The earlier embargoes in the northern colonies were imposed in the main for economic motives, hence included chiefly food-stuffs. Exceptions were nevertheless permitted as a rule to ship's stores, and to such trade as was permitted by license from the Governor or other duly authorized official.⁷ There was scarcely any harmony in the acts of neighboring states. In fact, several of the embargoes were the result of similar provisions in a neighboring state.

³ See, e. g., Col. Rec. of N. C., X, V; Col. Rec. of R. I., 22, 237.

⁴ Journals of Cong. (1800), I, 31-35, Aug. 1, 1775. For the observance of the "Association" in the several colonies, see Force, American Archives, 4th series, I, II.

⁵ Congress and committees of safety also provided embargoes.—Journals of Cong. (1800), June 14, 1775. Sumner, Finances of Amer. Revol., I, 132.

⁶ N. H. State Papers, VIII, 412.

⁷ Hening, Statutes of Vir., IX, 386, 530, 533; Public Rec. of Conn., XV, 314, 414, 561; Sumner, Finances of Amer. Revol., I, chap. VI.

Congress, in 1779, recommended the authorities of Pennsylvania and the southern states to permit Massachusetts and Rhode Island to secure grain and flour. The appeal to Pennsylvania at least was unsuccessful for it was anticipated that any surplus grain would be wanted for the army.⁸ The embargoes of neighboring colonies bore particularly hard on Rhode Island.⁹

There was furthermore a political motive back of numerous embargoes, for it became necessary to resort to this expedient to assure provisions for the army or to secure sufficient men for the army or to man the war vessels. To attain the latter purpose embargoes were placed upon shipping, for the residents of sea-port towns often preferred to volunteer for the numerous privateers which were to be found all along the coast.¹⁰

Tariff Legislation. The changes in the tariff policy subsequent to the Revolution, and prior to the inauguration of federal control, furnish us with the most important and noteworthy phase of commercial legislation. The states became sovereign and, in consequence, had the power to regulate commerce.¹¹ The failure of the commercial provisions in the Articles of Confederation clearly illustrates this view.

Most of the acts imposing duties on goods brought into the colonies expired or were repealed with the Revolution, since trade was practically suspended. Maryland repealed all duties on imports and exports during 1778 and 1779, with the exception of the duty on negro slaves.¹² Virginia repealed her duty on tobacco in 1776, but a year

⁸ Journals of Cong. (1800), V, 57; Col. Rec. of Pa., XI, 682.

⁹ Sumner, Finances of Amer. Revol., I, 134-137.

¹⁰ Col. Rec. of R. I., VIII, 55, 217; Col. Rec. of Pa., XI, 761, 763, 766.

¹¹ Baldwin, Constitutional View, 181; Jefferson, Writings (Ford ed.), IV, 55.

¹² Laws of Md. (1765-1784), Feb., 1777, chap. 18.

later the necessity for revenue caused a duty of 10s. per hogshead to be imposed on that commodity.¹³ Pennsylvania recommenced to impose duties in the latter part of 1780,¹⁴ and from that time until the adoption of the Constitution, most of the other states provided imposts.¹⁵ Peace brought with it the necessity of providing revenue to meet the current needs of government and the extinction of the war debts. Duties were therefore imposed to furnish a portion of this revenue. The duties were low at first, and in the southern states, perhaps, did not go beyond the stage of purely revenue measures.¹⁶ Pennsylvania, Virginia, Massachusetts, New York and Maryland enacted comparatively numerous tariff laws. With the exception of South Carolina, and perhaps Pennsylvania, these states were the same that had been relatively active during the colonial era in enacting tariff legislation.

Although the reason for most of these acts was revenue, motives of discrimination and protection were prominent in those of the northern states, and to a less extent in the

¹³ Hening, Statutes, IX, 162, 361.

¹⁴ Laws of Pa., 423, ch. 190.

¹⁵ Delaware and New Jersey did not levy import duties, but relied on internal taxes, as during the colonial period. To encourage her trade, New Jersey provided free ports in 1783 for the import and export of all goods, "clear of all Duties, Customs or Imposition, of any Species or Denomination." In 1784, Perth Amboy and Burlington were constituted free ports for twenty-five years, and goods were to pay duties only if levied for the use of the United States. Free ports were also established for Delaware in 1786.—Wilson, Acts of N. J. (1783), 330; Paterson, Laws of N. J. (1800), 52; Laws of Del. (1797), II, 831. Georgia enacted one law imposing duties on the importation of commodities and negroes in 1784. It was amended two years later and repealed in 1787.—Watkins, Digest of the Laws of Ga., 289, 325.

¹⁶ Madison, Letters and Writings (1867), I, 271; Calendar of Vir. State Papers, IV, 147, 240, 264; Pa. Archives, IX, 206; Hill, Tariff Policy, 43; Hening, Statutes of Vir., XI, 375. Several of the rates which were imposed in the southern states discriminated against British goods and ships.

southern states. An explanation of these motives may be found in the conditions existing at that period. The cessation of war was the occasion for importing large quantities of British goods on credit.¹⁷ The states were consequently being rapidly drained of their specie, and what domestic manufactures they had were almost exterminated. Furthermore the obstruction of the West India trade was a serious menace to American commerce. John Adams probably voiced the current sentiments when he stated that the West India Islands "can neither do without us, nor we without them."¹⁸ Trade with the West Indies during the colonial period was absolutely essential to pay for English manufactures. It was considered to be just as essential after the Revolution. Yet the ports of the British West Indies were closed to American vessels by an order in council of July 2, 1783, and thenceforth trade could be carried on only by British subjects.¹⁹ Notwithstanding the efforts which had been made to secure freedom of trade with France and continental countries, the bulk of the trade still continued with England. Hence, the British repressive measures (although merely a logical extension of the commercial system then in vogue, since the American states had to be regarded as independent and therefore as alien) had a close and important bearing on the commercial legislation of the states.

¹⁷ Am. Hist. Assn., 1896, I, 610, 611, 719 et seq.; Boston Independent Chronicle, April 21 and 28, also July 15, 1785, extracts in Hill, Stages of Tariff Policy, appdx., 140-142; Mag. Amer. History, VIII, 351-355.

¹⁸ Adams, Works, VIII, 74; Report of a committee of the Privy Council, January, 1791, 10 et seq.

¹⁹ Order in Council in Adams, Works, VIII, 97, 98; Am. State Papers, Commerce and Navigation, II, 251. There were some who believed these restrictions were not intended to be enforced, especially since the West Indies were more dependent upon the produce of the states than vice versa.—Sparks, Life of Morris, I, 267; Staples, R. I. in the Cont. Cong., 461, 462.

Discrimination by higher duties on goods imported in British vessels was most prominent in the New England states (except Connecticut which invited commerce by a comparatively free trade policy in respect to England) and New York.²⁰ These were also the states which were barred from the principal market for their commodities. New Hampshire imposed double duties on goods imported in foreign vessels, and an additional duty of 6d. per bushel of salt in 1785. British vessels were not to load or unload any goods of the growth or manufacture of any of the United States in a port of New Hampshire.²¹ Rhode Island imposed a duty of 7½% on goods imported in British bottoms, while goods imported in other vessels paid only one-third that amount. Shortly afterward goods of the United States could not be exported in British vessels, nor were British vessels to enter any port of the state.²² New York imposed double duties on rum and other distilled liquors imported in vessels with British registers (4d. per gallon);²³ and after July 1, 1785, all goods imported in British vessels were to pay double duties. The latter explanatory act was the cause of con-

²⁰ Collection of Papers on Navigation and Trade (1807), 57, 58. This report gives a summary of the discriminations.

²¹ N. H. State Papers, XX, 502. A motion (Feb. 17, 1786) in the lower house in New Hampshire called for the suspension of the navigation act until similar laws should be provided in all the New England states and New York. The Assembly shortly after provided a bill imposing duties on foreign goods, and even for raising revenue by an export duty. Neither became a law. The Governor then urged the importance of revising the import duties, and the Assembly replied that domestic manufactures, and the discouraging of the importation of unnecessary and superfluous commodities would receive their earliest attention.—Ibid, XX, 504, 517, 518, 618, 627.

²² The duty on foreign hemp was removed unless imported in British vessels.—Col. Rec. of R. I., X, 106, 121, 141. Rhode Island was practically forced to suspend her act (February, 1786) until Connecticut should provide similar legislation.—Ibid, X, 170.

²³ Laws of N. Y. (1785), chap. 7.

siderable trouble and discrimination by neighboring states.²⁴ Maryland was one of the first states to discriminate against British goods, for by an act of 1783 such goods were to pay 2% more than other goods. Maryland further instructed her delegates to Congress to "agree and ratify" any measures investing that body with power to prevent the importation of foreign goods imported in vessels other than those owned and navigated by citizens of the United States.²⁵ Virginia, smarting under the British order in council, granted a more specific power to Congress especially so far as the British West India trade was concerned.²⁶ In 1786 wine was required to pay an additional duty of 4d. per gallon when imported, except French wine imported in vessels owned by French or American citizens. This act was aimed at the English trade.²⁷ North Carolina had already provided an increase of 20% in the duties on goods imported in vessels of citizens not having a treaty of commerce with the

²⁴ Ibid, chap. 34. The act provided that goods other than the produce and manufacture of any of the United States imported from Rhode Island, Connecticut, New Jersey or Pennsylvania were to be liable to the same duties as those imported in any British vessel, unless it was proved to the satisfaction of the collector that these goods were not brought into the said states in British vessels.

²⁵ Laws of Md., 1765-1784, ch. 29 (December session).

²⁶ "That the United States in Congress assembled, shall be, and they are hereby authorized and empowered to prohibit the importation (of goods) of the growth or produce of the British West India islands, into these United States, in British vessels, or to adopt any other mode which may most effectually tend to counteract the designs of Great Britain, with respect to the American commerce, so long as the said restrictions shall be continued on the part of Great Britain.—Hening, Statutes, XI, 313. A similar grant was made by South Carolina in 1784, on condition that all of the States would vest this power in Congress.—Cooper, Statutes, IV, 596.

²⁷ The following year, on complaint of Dutch merchants, goods in Dutch vessels and those of countries in treaty relations with the United States were placed on the same footing as those imported in vessels of any of the United States.—Hening, Statutes, XII, 290, 514; Calendar of Vir. State Papers, IV, 298.

United States.²⁸ South Carolina did not discriminate to any extent against British commodities. Only brown or clayed sugars from the British Islands paid 2s. per hundredweight in 1783, while those from the dominions of France, Spain, Holland, Denmark and Sweden paid 1s. 6d.; on refined sugar the rates were 1d. and ½d. respectively.²⁹ Early in 1787 wine from the British dominions was also forced to pay a comparatively high duty.³⁰

Indirectly, if not directly, the encouragement of direct trade to the Orient,³¹ and the lower duties on goods from nations having commercial treaties with the United States,³² may be viewed as a discrimination against British trade.³³

²⁸ State Rec. of N. C., XXIV, 718. The duty of two per cent on salt was also commuted to 2d. per bushel when imported in American vessels, or in those of nations having commercial treaties with the United States.

²⁹ Reënacted in 1784.—Cooper, Statutes, IV, 576, 607. In 1787, the duties were increased to 2s. 6d. for brown sugar and 1½d. for refined sugar from the British possessions; 1s. 6d. and ½d. respectively from the other dominions, to which Prussia was added.

³⁰ Ibid, V, 8.

³¹ Only a few acts of this nature were passed. Thus an act of Pennsylvania provided that stone or earthenware should pay a duty of five per cent; while porcelain was exempted when imported directly from the Cape of Good Hope, China or India in vessels built and owned in the United States. The same exemption was provided for teas: otherwise the rates were 6d. per pound for hyson, 4d. for fouchong, and 2d. for other teas.—Laws of Pa., 1787, 241. An earlier act in that state had imposed a duty of 6d. on hyson and 2d. on other kinds when imported from Europe or the West Indies—practically a discrimination against English trade.—Ibid, 1785, 669. New York also granted lower duties on tea imported from Asia in vessels built or owned by her citizens.—Laws of N. Y., 1787, chap. 81.

³² In part such duties were expected to create or establish markets with other countries besides Great Britain.—Hening, Statutes of Vir., XII, 290, 514; Cooper, Statutes of S. C., IV, 576, 607; Treaties and Conventions of the U. S. (1889): treaty of 1778 with France, articles 2, 3, 4, 30; with the Netherlands in 1782, articles 2, 3, 9; etc. The London Chronicle, December 3, 1782; Sheffield, Observations on the Commerce of the Amer. States (1784), 201–207, 263–266.

³³ An occasional discrimination can also be found against goods

Besides the discriminations against British trade, two other tariff features evolved out of the conditions then existing. There was a desire on the part of several states to encourage manufactures. Comparatively high duties were placed upon goods from foreign countries.³⁴ It was protection in a very mild form which was thus instituted by northern states about 1785 to encourage home manufactures. Many of the articles, like shoes and clothing, had been made to a greater or less extent during the colonial period and the Revolution. Compared with the protective duties of the constitutional period, the significance of these attempts dwindles away, but if compared with the colonial period, we note at once the change which was introduced. Furthermore, encouragement to home manufactures was contrary to the ideas of the leading statesmen of the time—Adams, Madison, Franklin and Jefferson. The only prominent statesmen who upheld aid to manufacture at that time were Washington and Hamilton.³⁵

In several instances the duties on articles were increased to afford a larger revenue and yet encourage home manufactures. Thus, New Hampshire provided incidental protection in 1786.³⁶ A 15% ad valorem duty was imposed upon gold, silver, jewelry, silks, and other luxuries,

from other nations, as in the duty on wine and fruit from the Portuguese dominions, because flour was prohibited.—*Laws of Pa., 1785, 669.*

³⁴ Hill, *Early Stages of Tariff Policy*, 91, 92; Madison, *Works*, I, 271.

³⁵ Hill, *Early Stages of Tariff Policy*, 75-90; Elliott, *Tariff Controversy*, 34 et seq.

³⁶ The preamble stated that "the laying duties on articles of the produce and manufacture of foreign countries, will not only produce a considerable revenue to the State, but will tend to encourage the manufacture of many of these articles within the same." The act was continued two years later because it had been found "very beneficial."—*Laws of N. H., 1776-1789, 152, 159.*

and a similar duty upon boots and shoes, hats, saddles, furniture, wrought iron, nails and several other articles; on china, earthen and stoneware, the duty was 10%; on wines, beer, porter and ale, 5%. Pitch, tar and turpentine paid 3s. per barrel; and $2\frac{1}{2}\%$ ad valorem was imposed on all non-enumerated goods. Massachusetts provided incidental protection as early as 1784 when a duty of $7\frac{1}{2}\%$ was imposed on candles, soap, linseed oil, leather, beef and pork; and $12\frac{1}{2}\%$ on harness, saddles, boots and shoes. Luxuries were also required to pay similar duties.³⁷ The following year protection was carried further, and the duties on some articles were as high as 25%, while high specific duties were imposed on other commodities.³⁸ In 1786, home industries were encouraged by prohibiting entirely the importation of many articles not the growth or manufacture of any of the United States, and articles which could be imported paid duties ranging from 5% to 15%.³⁹ The protection to her industries was probably more complete in Massachusetts than in any other state.⁴⁰ The Assembly of Rhode

³⁷ Laws of Mass., 1783-1789, 149.—Cf. Am. Hist. Assn., 1896, I, 731.

³⁸ The preamble of this act stated that "it is highly necessary for the welfare and happiness of all states, and more especially such as are republican, to encourage agriculture, the improvement of raw materials and manufactures, a spirit of industry, frugality and economy, and at the same time to discourage luxury and extravagance of every kind."—*Ibid*, 300. This enactment followed shortly after the resolutions of the Boston merchants, and of the tradesmen of that town. The latter body provided for a committee which should send a petition to the state legislature "setting forth the difficulties the manufacturers of this town labor under, by the importation of certain articles . . . and praying a prohibition, or that such duties may be laid, as will effectually promote the manufacture of the same."—*Boston Independent Chronicle*, April 21 and April 28, 1785; also in Hill, *Early Stage of Tariff Policy*, appdx., 140-143.

³⁹ Laws of Mass., 1783-1789, 529.

⁴⁰ The evidence of attempts to furnish any protection to home industries in Connecticut is not clear. It is probable that her duties

Island appointed a committee in 1785 to draft a bill for imposing additional duties upon hats, shoes, boots, and such other articles of foreign manufacture as could be made to advantage within the state.⁴¹ Shortly afterward an act was passed imposing specific duties upon a long list of articles, and on others ad valorem duties ranging as high as 25%.⁴²

Of the middle states, New York and Pennsylvania also provided incidental protection. From 1784, New York imposed rather high specific duties on some goods of European origin (hats, boots, saddles, chairs, coaches, etc.), and in addition a small ad valorem duty on non-enumerated goods. The ad valorem duties were increased in 1787, varying from 5% to 10%; and in the following year "to encourage manufactures, and by every wholesome regulation, consistent with the spirit of liberty, to repress the further progress of luxury and extravagance" a further duty of 8% ad valorem⁴³ was imposed upon numerous articles of women's apparel, jewelry, carpets, glassware, etc. Moreover, further specific duties were imposed upon spikes, nails, shovels, hoes, painters' colors in oil and spirituous liquors. The protection granted by Pennsylvania was probably more important. In 1785 it was proposed "to encourage and protect the Manufac-

were dictated by motives of revenue and discrimination. In 1785 an ad valorem duty of 6% was imposed on non-enumerated goods, with specific duties on hats, boots, shoes, leather, saddles, rum and brown sugar.—Acts and Laws of Conn., 309. The following year an additional duty of ½d. per pound was imposed on nails, unless made in the United States, while subsequent acts provided for a duty of 6s. per hundred pounds value of hemp or cordage imported from foreign countries, and 3s. per quintal on fish.—Ibid, 346, 354.

⁴¹ Col. Rec. of R. I., X, 89, 106.

⁴² The act was changed somewhat a year later.—Ibid, X, 115, 150. The act of 1785 may be found in Hill, *Early Stages of Tariff Policy*, appdx., 145, 146.

⁴³ Laws of N. Y., March 22, 1784, chap. 10; November 18, 1784, chap. 7; April 11, 1787, chap. 81; March 12, 1788, chap. 72.

tures of this State, by laying additional Duties on the Importation of certain Manufactures which interfere with them." High specific duties were imposed upon many articles, while certain raw materials were exempted from all imposts. British steel, manufactures of iron, hats, clothing, books and some other articles paid a duty of 10% ad valorem. Further ad valorem duties ranging from 5 to 7½% were imposed upon iron and steel, leather, and lumber for shipbuilding when imported from foreign countries.⁴⁴ This act is of importance in subsequent tariff legislation, since it formed the basis of the first federal act.

The other tariff feature which necessarily developed out of the conditions of the time was the discrimination or retaliation against commodities imported from neighboring states. Had it developed during the colonial period to any great extent, matters could have been adjusted by the home government. Now, with each state sovereign, there was scarcely any redress, for few agreements existed which tended to check discrimination.⁴⁵ One outcome was the Annapolis convention, which led ultimately to the federal convention. Tenche Coxe made a statement September 13, 1786, at the Annapolis meeting that in several states duties imposed upon goods imported in vessels built or owned in other states of the confederation were greater than those imposed upon goods imported in vessels of the legislating state. Moreover, goods of the growth or manufacture of other states were charged with high duties, amounting in many instances to rates as high as those imposed on similar goods from foreign countries.⁴⁶ The New England states had imposed discrim-

⁴⁴ Laws of Pa., 785, 669; also in Hill, *Early Stages of Tariff Policy*, 146-150.

⁴⁵ Madison, Works, I, 216; Calendar of Vir. State Papers, III, 192; IV, 280, 326-329; cf. also N. H. State Papers, XX, 197, 215.

⁴⁶ Calendar of Vir. State Papers, IV, 168, 169. In a letter to

inating duties on English goods, particularly when imported in English vessels. Connecticut, however, pursued an opposite policy and even imposed duties on goods from Massachusetts. The latter state at once protested and the Governor sent a complaint to the several states.⁴⁷ New York also imposed like duties on British goods brought in through a neighboring state as when imported directly.⁴⁸ Moreover, port fees and tonnage duties were imposed on vessels from Connecticut and New Jersey. This action increased the cost of the farm produce from these two states and aroused a spirit of retaliation. Connecticut merchants at New London agreed to suspend all commercial dealings with New York for a year, and a fine of \$250 was to be imposed for each violation. New Jersey taxed the property for the lighthouse which New York had erected at Sandy Hook, \$1800 per annum.⁴⁹ These represent the more noteworthy instances of retaliation by the states. Notwithstanding their significance, we must not forget that such action was really exceptional, for it was usual during the period to exempt goods of the growth or produce of any of the United States from import duties by the legislating state.

The tariff legislation of the period was further complicated by the use of export duties in two of the southern states—Maryland and Virginia. Duties on exports had been on the decline ever since the middle of the century;

Jefferson (March 18, 1786), Madison stated that "When Massachusetts set on foot a retaliation of the policy of Great Britain, Connecticut declared her ports free. New Jersey served New York in the same way. And Delaware, I am told, has lately followed the example, in opposition to the commercial plans of Pennsylvania."—Works, I, 226.

⁴⁷ Calendar of Vir. State Papers, IV, 60, 61; Madison, Works, I, 216.

⁴⁸ Laws of N. Y., March 15, 1785, chap. 34.

⁴⁹ Ibid, April 11, 1787, chap. 81; Fiske, Critical Period of American History, 151, 152.

the reason for their retention in Maryland and Virginia was the necessity of securing revenue.⁵⁰ The latter had repealed her export duty on tobacco at the outbreak of the Revolution; Maryland, in 1777, discontinued her duties for two years.⁵¹ Virginia imposed a duty of 10s. per hogshead of tobacco in 1777, and in the following year exempted tobacco exported to the French West Indies in accordance with a treaty between France and the United States. This duty was lowered subsequently, and an additional duty of 6s. imposed in 1786 to provide revenue for the requisition of Congress.⁵² Maryland imposed duties on wheat, flour and tobacco, while ten per cent rebate was allowed if the duty were paid in gold. Deductions were also allowed on vessels owned and navigated by the inhabitants of the state.⁵³ There was even a tendency towards unity in export duties by these two states, for the Virginia Assembly passed a resolution in 1786 for like duties on imports and exports.⁵⁴ The export duties of this period were, therefore, practically restricted to the two states which had provided similar legislation so actively during the colonial period. The controversy over the right of Congress to impose duties on exports was based, therefore, upon a power which was not exercised by a large majority of the states during the Confederacy.

The tariff legislation of the period was actuated by three motives—revenue, protection and discrimination.

⁵⁰ Calendar of Vir. State Papers, IV, 147, 240, 264.

⁵¹ Hening, Statutes of Vir., IX, 162; Laws of Md. (1765–1784), chap. 18, 1777.

⁵² In 1782 the rate was 6s. and in 1783 it was only 4s. per hogshead.—Hening, Statutes, IX, 361, 551; XI, 95, 201; XII, 288.

⁵³ The duties were as follows: 3d. per barrel of flour; 1d. per bushel of wheat; 2s. per hogshead of tobacco.—Laws of Md. (1765–1784), chap. 50, 1782; chap. 84, 1784.

⁵⁴ Calendar of Vir. State Papers, IV, 80. Robert Morris also proposed to Congress an export duty in a report submitted March, 1783, to provide revenue.

The protection afforded by the various acts was usually incidental when looked at from the present standpoint. On the whole, the discriminations furnish us an important motive, though probably subordinate to the attempts to secure revenue. The grant of drawbacks, and the desire to increase foreign trade or create new markets also fostered discrimination and acted as a check to the revenue aspects of the tariff legislation.⁵⁵

The Shipping Policy. Since there was a practical suspension of trade during the Revolution, the vessels were frequently fitted out as privateers; trade was too precarious to admit of many navigation regulations. With the restoration of peace, tonnage duties were again enacted, although they were reimposed somewhat earlier in Virginia.⁵⁶ We have already noted the discriminations on goods imported in British vessels. At the same time and for substantially similar reasons discriminating tonnage duties were enacted against vessels of foreign nations, particularly British vessels.⁵⁷

New Hampshire imposed treble tonnage duties on foreign vessels in 1784, and in the following year British vessels were required to pay 5s. per ton, and a further duty of 2s. 6d. per ton as "light" money.⁵⁸ Massachusetts in 1784 exempted vessels owned by citizens of the United States from a duty of 4d. per ton; and three years later, when a 2½%

⁵⁵ It is noteworthy that smuggling did not cease during this period. Doubtless part of the illegal trade was due to the inefficiency of the officials administering the laws, and to the loose manner in which many of the acts were drawn. Protests are also occasionally found against the imposition of duties.—*Calendar of Vir. State Papers*, IV, 89, 112, 239–241, 245, 247, 308, 378–388. Cf. *Am. Hist. Assn.*, 1896, I, 534, 535, 537, 550.

⁵⁶ Hening, *Statutes of Vir.*, X, 511.

⁵⁷ British vessels were prohibited to load goods in New Hampshire, Massachusetts and Rhode Island. Cf. *Collection of Papers on Navigation and Trade* (1807), 55, 56.

⁵⁸ This was in addition to heavy imposts on goods imported in these vessels.—*Laws of N. H.*, April 16, 1784; June 23, 1785.

duty was imposed on vessels of the United States, vessels not wholly owned by American citizens paid 1s. per ton.⁵⁹ Pennsylvania provided an additional duty of 7d. per ton on foreign vessels in 1784; in the following year a discrimination was made against vessels of Great Britain when a duty of 7s. 6d. per ton was imposed upon vessels not having commercial treaties with the United States.⁶⁰ Three years later, vessels from foreign ports not owned by citizens of any of the United States paid 1s. 2d. per ton, which was about twice as much as the duty paid by American vessels.⁶¹ Maryland, as early as 1783, imposed a duty of 5s. per ton on vessels of Great Britain on the ground that American vessels were excluded from the carrying trade to the British West Indies.⁶² Virginia did not practice discriminations until 1785 when an additional duty of 5s. per ton was imposed on ships owned in whole or in part by British subjects. The following year a duty of 2s. per ton was imposed on vessels owned by citizens of any of the United States, 3s. per ton on foreign vessels of nations having commercial treaties with the United States, and double that sum on foreign vessels of nations which did not have such treaties. These rates were in addition to a duty of 6d. per ton for the light-house.⁶³ The preceding year, North Carolina had provided a similar law. Vessels of the United States and of nations having commercial treaties with the United States

⁵⁹ Laws of Mass., 1780-1789, 285. Rhode Island, in 1783, imposed 8d. per ton on vessels clearing for foreign ports and half that sum on vessels clearing for ports in the United States.—Col. Rec. of R. I., IX, 708.

⁶⁰ Laws of Pa. (1784), 354; *ibid* (1785), 672. It was repealed in 1786, because it was contended that this discriminating duty impaired the revenue and trade of Pennsylvania, unless the neighboring states imposed similar duties.

⁶¹ *Ibid* (1788), 488.

⁶² Laws of Md., 1765-1784, chap. 29.

⁶³ Hening, Statutes, XII, 32, 289.

were required to pay 10s. per trip if under sixty tons burden, and 3d. per ton if over that burden; on foreign vessels of nations not having treaties of commerce with the United States, the duty was 5s. per ton—a very disproportionate rate.⁶⁴

Tenche Coxe, writing in 1786, declared that in several of the states the tonnage duties on vessels of American citizens were greater than those on vessels of the state enacting the law, and in some instances the duty was equivalent to that imposed upon foreign vessels having “Commercial intercourse with America.” Pennsylvania, he continued, did not discriminate against ships of American citizens in any charge whatever, out of a due regard “for the general Commerce of the nation.”⁶⁵ Others also looked with disfavor upon tonnage duties on American vessels of neighboring states.⁶⁶

The tonnage duties on vessels of other states, however, must not be looked upon as a discrimination or retaliation, since the chief motive for these acts even more than in the colonial period, was the need of revenue for lighthouses, beacons and buoys. The lower tonnage duties or

⁶⁴ State Rec. of N. C., XXIV, 718.

⁶⁵ Calendar of Vir. State Papers, IV, 169; Col. Rec. of R. I., IX, 708; Cooper, Statutes of S. C., IV, 582, 593, 621; Hening, Statutes of Vir., XI, 70, 121; cf. Bancroft, Formation of the Constitution, I, 334, 335.

⁶⁶ At a meeting of merchants in Portsmouth, Virginia, in 1787 they expressed surprise at the imposition of a duty of 2s. per ton on American vessels, especially since it was “well known that all other nations are doing everything in their power to cramp and restrain our Carrying Trade, and when it is known that our trade is under such manifold disadvantages, that every merchant in the State, who owns an American bottom, is actually sinking money, by them, or endeavoring to sell them at less than half their cost. . . . The Carrying Trade also, from Maryland and Carolina, must be effectually stopp’d, as the Tonnage on small vessels would frequently amount to as much as the freight of their cargoes.”—Calendar of Vir. State Papers, IV, 240.

exemptions upon coastwise trade were not, upon the whole, as extensive as during the latter part of the colonial period.

COMMERCIAL LEGISLATION BY THE CONFEDERACY.

Attempts of Congress to Regulate Commerce. The states possessed sovereign powers in the matter of commercial legislation; moreover, they jealously guarded this power. Hence, in the Articles of Confederation, signed last by Maryland on the first of March, 1781, the powers of Congress over commercial legislation were very restricted in scope.⁶⁷ The states were restrained from entering into treaties, confederations or alliances without the consent of Congress, but in two essential respects, the states did not delegate any real power to the central authority. These included the power to raise taxes⁶⁸ and the power to regulate commerce. In these instances it could propose resolutions upon which the states would then pass judgment. Three resolutions by Congress requesting the power to regulate commerce were passed;⁶⁹ none succeeded in se-

⁶⁷ On the subject of treaties the Articles provided that "No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

"No State shall lay any imposts or duties, which may interfere with any stipulation in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed to Congress, to the courts of France and Spain."—Article VI.

⁶⁸ C. J. Bullock, *Finances of the U. S. from 1775 to 1789*, Univ. of Wisconsin bulletin (1895), 118 et seq.

⁶⁹ Other commercial regulations were discussed in Congress to secure revenue or unity throughout the states. Probably the most important was a motion introduced by Monroe of Virginia, which proposed a limitation on the right of states to lay import duties on goods from other states; and secondly an amendment to article nine of the Articles of Confederation whereby Congress should have the power to regulate foreign commerce by import and export duties. Acts passed under this amendment were to be approved by repre-

curing the assent of all the states and hence did not become operative. The lack of success in this direction was one of the chief causes leading to the Constitution, which provided for a central authority with more power to act.

On the third of February, 1781, Congress considered a resolution of Mr. Witherspoon, recommending to the states that it was absolutely necessary that it be vested with power to impose duties upon imports, and that no restriction should be valid unless concurred in by nine states. The motion was lost, but a resolution was passed the same day, requesting the power to impose a duty of five per cent upon goods of foreign growth or manufacture, with certain exceptions.⁷⁰ A similar duty was also requested on prizes condemned in any port. The revenue was to be used in discharging the principal and interest of the public debt incurred on account of the war, while the grant was to continue until the debt should be paid. An urgent letter setting forth the necessity of the case accompanied this resolution to the states, and replies came in from some of the states within a few months. All of the states, except Georgia and Rhode Island, had given their assent by 1782, though some did so conditionally. Both were urged to give an immediate and definite answer.⁷¹ The assurances of the former left no doubt as to the favorable

sentatives of nine states in Congress and by the same number of state legislatures, and were to be in force for only a limited time. A report was made by the committee after three months. Monroe considered the plan a radical change, and that delay would aid its adoption. Discussion of the measure in Congress took place July 14, 1785, and in general the measure was opposed by the southern states, and supported by the northern states. Nothing came of it subsequently.—Hamilton, *Writings of Monroe*, I, 68, 80–83, 101.

⁷⁰ *Journals of Congress* (1800), VIII, 22. Exceptions were provided for arms, ammunition, clothing and other articles imported on account of the United States, also wool-cards and cotton-cards, wire used in making them, and salt.

⁷¹ *Journals of Congress*, VII, 370.

action of Georgia, but Rhode Island remained silent and ultimately refused to grant the power to Congress.⁷² With her refusal and the withdrawal of the consent of Virginia, Congress could not act, for the grant by other states was conditioned upon a like action by all the states.

The necessity of raising revenue again induced Congress in 1783 to ask for permission to levy import duties. The objections of the former request were avoided, and it was believed that the states would consent to this one. Specific duties were to be imposed on rum, wine, tea, pepper, sugar, molasses, cocoa and coffee, and an *ad valorem* duty of 5 per cent upon all other goods.⁷³ The duties were to be applied exclusively for discharging the debt; the duty, however, was to cease at the end of twenty-five years if the debt should not be extinguished.⁷⁴ As in the former instance, several states objected or granted the power conditionally. By August, 1786, all but New York had consented. The Governor of that state refused to call a special session of the legislature to consider this measure, even upon the resolution of Congress.⁷⁵ The measure could not, therefore, become operative.

An attempt to regulate navigation had the same fate. The British orders in council restricted American trade. That of the second of July, 1783, was especially obnoxious since it restricted the trade of the British West Indies to

⁷² For a discussion of the attitude of Rhode Island see F. G. Bates, *Rhode Island and the Formation of the Union*, in *Columbia University Studies*, 1898, 73-89. Cf. also the report by Hamilton, Madison and Fitzsimmons on Rhode Island's objections to the impost.—*Journals of Congress*, Dec. 11, 1782.

⁷³ *Journals of Congress*, VIII, 139.

⁷⁴ Accompanying this resolution was a letter prepared by Madison, Hamilton and Ellsworth, answering the objections to the previous impost, and urging the necessity of adopting the present measure.—*Journals of Congress*, VIII, 145-150.

⁷⁵ *Journals of Congress*, XI, 133, 145.

British vessels, owned and manned by British seamen.⁷⁶ On April 30, 1784, Congress requested permission from the states to prohibit, for a period of fifteen years, any goods from being imported into or exported from any state in vessels owned or navigated by subjects of foreign powers not having treaties of commerce with the United States. Congress further requested the power to prohibit the subjects of foreign nations, unless authorized by treaty, from importing any goods not the growth or manufacture of their own country. To the provisions of this act, nine states were to give their consent before it could take effect.⁷⁷ The northern states manifested considerable interest in this measure, but on the whole, the request met with a cold reception.⁷⁸ A committee of Congress (which had been appointed to investigate the laws passed by the states granting the power requested in 1784) found that Massachusetts, New York, New Jersey, and Virginia had passed such acts, but had made them inoperative until the other states assented. Three other states had fixed other dates when the act should commence; New Hampshire limited her grant to 15 years; Rhode Island and North Carolina had given power over imports and not exports; the other three states had done nothing.⁷⁹ Congress thereupon voted to present the resolution again to the three latter states, while New Hampshire, North Carolina and Rhode Island were asked to reconsider their acts.⁸⁰ Conformity, however, was never obtained, and this attempt failed like the other two.

⁷⁶ John Adams, Works, VIII, 97.

⁷⁷ Journals of Congress, IX, 133, 134.

⁷⁸ A. C. McLaughlin, *Confederation and the Constitution*, 84, 85; Washington, *Writings* (Sparks ed.), XI, 501; *Am. Hist. Assn.*, 1896, I, 728, 729.

⁷⁹ Connecticut, Pennsylvania and Maryland.

⁸⁰ Journals of Congress, XI, 31, 32. By October, 1786, all the states except New Hampshire and North Carolina had granted the

One commercial power Congress did have, but even this power could not be properly exercised. Through its influence in foreign affairs and its treaty-making power, it appointed commercial agents abroad and secured several treaties of commerce and friendship with foreign nations. The latter, however, had a political tinge which predominated over the commercial sections. This statement is emphasized in considering the action of Great Britain in refusing to negotiate a treaty of commerce with the United States, so long as any one of the states could render it ineffectual.⁸¹ With France a treaty was made in 1778; with Holland in 1782; with Sweden in 1783; and with Prussia in 1785.⁸² These treaties were the expression of attempts to create new markets in continental Europe. Reciprocity in the sense of reciprocal freedom of trade was attempted at a time when commercial restrictions were general. Naturally, its progress was necessarily slow. This principle was announced formally as early as 1778 in the treaty of amity and commerce concluded with France.⁸³ The reciprocity idea included in this treaty provided that "The Most Christian King and the United States engage mutually not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favour, freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional."⁸⁴

power in accordance with the request of Congress; and these two were again urged to comply.—*Ibid*, XI, 189, 190.

⁸¹ Bancroft, *History of the Formation of the Constitution* (6th ed.), I, 200; Report of Privy Council on Trade of Great Britain (1791), 5; Sheffield, *Observations on American Commerce*, 198, 262, 263.

⁸² *Treaties and Conventions of the U. S.* (1889), 296, 749, 899, 1042.

⁸³ *Treaties and Conventions of the U. S.* (1889), 296-306; see also notes, *ibid*, 1232, 1233, 1293 et seq.

⁸⁴ Article II. The preamble of this treaty is worth noting, for the

Congress, on May 7, 1784 adopted resolutions of a tenor quite in accord with this treaty. Briefly, the first resolution provided that each country to a treaty should secure the right to carry its own goods in its own vessels to the ports of the other country, and bring back the goods of the latter. The tariff duties were to be on the basis of the most favored nation—"freely where it is freely granted to such nation, or paying the compensation, where such nation does the same." In the second resolution, which dealt with the colonial trade, provision was made to enable the American negotiators to secure a direct and similar trade with the European possessions in America, and if that should be impossible, then to secure such a concession for certain free ports. A third alternative provided for the direct trade of the goods of the growth of either territory in vessels belonging to the country in which the goods originated.⁸⁵ The treaties already mentioned

contracting parties declared that in order to "fix in an equitable and permanent manner the rules which ought to be followed relative to the correspondence and commerce which the two parties desire to establish between their respective countries, States, and subjects, His Most Christian Majesty and the said United States have judged that the said end could not be better obtained than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burthensome preferences which are usually sources of debate, embarrassment and discontent; by leaving, also, each party at liberty to make, respecting commerce and navigation, those interior regulations which it shall find most convenient to itself; and by founding the advantage of commerce solely upon reciprocal utility and the just rules of free intercourse; reserving withal to each party the liberty of admitting at its pleasure other nations to a participation of the same advantages." Cf. also the preambles to essentially similar treaties concluded with the Netherlands (1782); Prussia (1785); and Sweden (1783).—*Ibid.*, 749, 899, 1042. The Netherlands were to be left in "the peaceful enjoyment of their rights in the countries, islands, and seas, in the East and West Indies, without any hindrance or molestation."

⁸⁵ Secret Journals of Congress (1821), III, 484, 485. For other provisions see *Ibid.*, 485-489.

were concluded practically along the lines of the first resolution.

The Annapolis and Federal Conventions. Congress evidently could do little to regulate commerce under such lack of harmony and unity. The impotence of Congress was the cause of considerable unrest and discussion on the part of many people throughout the Union.⁸⁶ The Annapolis convention was a direct result of this feeling. Virginia, New Jersey, Delaware, Pennsylvania and New York were represented.⁸⁷ The delegates considered the federal government inefficient, and recommended to the States the calling of a convention at Philadelphia in May, 1787. Alterations were to be made to the Articles to provide adequately for the exigencies of government—after they had been agreed to by Congress and the States.⁸⁸ It was believed that unless more power was given to Congress to regulate commerce, little good would be accomplished.

There was much dispute in the federal convention as to the extent of power which should be given to Congress, in which sectional interests, economic and political, played

⁸⁶ See, e. g., Report of Amer. Hist. Assn., 1896, I, 717-719, 724, 725, 728; Jefferson, Writings (Ford ed.), III, 347, 351, 398; Johnston, Corres. and Public Papers of Jay, III, 178, 179; Hamilton, Writings of Monroe, I, 53-55, 59, 80-86, 97-99; articles in contemporary newspapers.

⁸⁷ Resolutions calling for a convention were presented in the Virginia legislature, January 21, 1786. The convention was "to take into consideration the trade of the United States, to examine the relative situation and trade of the said states, to consider how far a uniform system in their commercial regulations may be necessary to their interest and permanent harmony, and to report to the several states such an act relative to this great object as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same."—The resolutions as well as the proceedings of the commissioners at the convention are in Elliot, Debates on the Federal Constitution, I, 115-119. See also Pa. Archives, XI, 521, 522; Calendar of Vir. State Papers, IV, 117.

⁸⁸ Journals of Congress.

a prominent part.⁸⁹ As finally adopted, Congress was given paramount control over interstate and foreign commerce⁹⁰—more potential power, perhaps, than the majority of delegates at the convention suspected, if we view the question of federal regulation of commerce from the present standpoint. The treaty-making power was vested exclusively in the federal government, and treaties were to form part of the supreme law of the land.⁹¹ Congress was further empowered to lay and collect duties on the condition that they must be uniform throughout the United States.⁹² Nevertheless, Congress was not permitted to give any preference by any regulation of commerce or revenue to ports of one state over those of another, nor could vessels bound to, or from, a state be compelled to enter, clear or pay duties in another.⁹³ States were forbidden, without the consent of Congress, to impose import or export duties, except what was absolutely essential for carrying out the inspection laws,—and the net revenue from such duties was to be covered into the federal treasury.⁹⁴ Similarly, the states were forbidden, without the consent of Congress, to impose tonnage duties.⁹⁵ By a compromise arrangement duties could not be imposed on articles exported from any state; Congress could not pro-

⁸⁹ The history and development of each clause of the constitution in the convention is briefly traced out by Meigs in the *Growth of the Constitution in the Federal Convention of 1787*. The debates at length are in Elliot, *Debates on the Federal Constitution*, and in the *Documentary History of the Constitution of the U. S.* The standard work for the period is Bancroft, *History of the Formation of the Constitution*. Cf. also volume I of Curtis, *Constitutional History of the United States*.

⁹⁰ Article I, sec. 8, clause 3.

⁹¹ Article I, sec. 10, clause 1; article II, sec. 2, clause 2; article VI, clause 2.

⁹² Article I, sec. 8, clause 1.

⁹³ *Ibid.*, sec. 9, clause 6.

⁹⁴ *Ibid.*, sec. 10, clause 2.

⁹⁵ *Ibid.*, sec. 10, clause 3.

hibit the importation of slaves before 1808, but could impose a tax not exceeding ten dollars on such importation; while Congress was permitted to pass navigation acts by majority vote, which had been opposed by the Southern States.⁹⁶

A review of the legislation of the period from the Revolution shows us that the changing conditions—economic and political—made necessary changes in the laws. The independence of the United States made thirteen sovereign states, each with the power to enact commercial legislation according to its own interests. Little could be done in the way of united action; that was clearly demonstrated when Congress asked for permission to levy imposts and to provide a navigation act. The conditions of the time, with the consequent discriminations and retaliations, showed that harmonious action would not be promoted by so many sovereign units. A stronger federal government was essential, and as one of its most important perquisites, the general regulation of commerce was conferred upon it, but not without much misgiving.⁹⁷

⁹⁶ Ibid, sec. 9, clauses 1 and 5. Gouverneur Morris said that "These things may form a bargain among the Northern and Southern States." Hildreth calls it the third great compromise of the constitution. For a discussion see Hildreth, *History of the U. S.* (rev. ed.), III, 509-520. Cf. Report of Amer. Hist. Assn., 1903, I, 74.

⁹⁷ See the *Federalist* for forcible discussions of the inadequacy of the Confederacy, and the utility of the Union to political prosperity.

CHAPTER VII

CONCLUSIONS

The facts presented in the preceding pages show us that trade regulations were of importance in practically all of the thirteen colonies. There was quite naturally a difference of emphasis and a difference in the extent of legislation, but the same could be said for practically any similar group of states or legislative bodies. The geographical conditions made the colonies dependent upon navigation as the prevalent means of transportation and communication. The nature of the soil and the climate in the New England colonies contributed materially to emphasizing the trade and navigation which led inevitably to the regulation of commerce. In the middle and southern colonies soil and climate were more favorable for agriculture, and the staples furnished good and indeed necessary commodities for export to pay for English manufactures.

The economic background can be explained chiefly with reference to the English colonial system, which was worked out under the influence of mercantilism. All of the European countries having colonies in the new world or in the Orient, during the period under review, regulated their possessions with the idea of developing practically exclusive markets for home manufactures. The colonies were to furnish raw materials and to settle net deficits in specie. The immediate purpose was practically economic, the ulterior motive may have been political, i. e., the desire

for national power. Great Britain was not an exception to the rule, although it has been asserted that her colonial policy was less illiberal than that of any other European nation. The navigation acts; the enumeration of goods which could only be exported to English markets; the bounties on naval stores; the restriction of manufactures; the drawbacks, duties, etc.—all were parts of her general commercial policy. Governors were instructed to cause the acts of trade to be strictly enforced, and were often active in suggesting to the colonial assemblies methods of increasing the trade with England, particularly by means of bounties to be offered to the inhabitants of the legislating colony to provide a commodity which could be exported to England to pay for manufactures. Moreover, collectors and other customs officers were provided in the several colonies to insure due observance of the acts of trade and navigation.

The supervision of these matters by the home government was given over to the privy council, under which in 1696 a permanent organization—the Board of Trade and Plantations—was established. During the first few decades of the eighteenth century, at least, its activities caused the rejection of numerous trade regulations, many of which were deemed to have been enacted by the colonial assemblies in violation of the acts of trade and navigation. The latter bodies were forbidden by charter provisions in the corporate colonies and by instructions to Governors in the royal provinces, to enact laws repugnant to acts of Parliament—hence the necessity for an administrative body in the home government.

Under such limitations only, were the colonies enabled to legislate for their own welfare. Their most important commercial legislation was occasioned chiefly by fiscal reasons. The tariff legislation in several of the colonies developed into a veritable system and the revenue which

was derived served to supplement the proceeds of direct taxation for the support of the government. In exceptional instances duties were not imposed for revenue, but were intended to be prohibitive, as in the case of the few retaliatory acts which were passed, and also some of the duties on negro slaves. Likewise the tonnage duties were imposed for the support of the government, at first to help build fortifications, and later to facilitate commerce by means of lighthouses, beacons and buoys. Probably New York and the southern colonies, except Georgia, secured more revenue from indirect taxes in proportion to their total revenue than was the case in the other colonies.

The staple products of the New England colonies were exported chiefly to the West Indies and to southern Europe; those of the middle colonies to the same destinations as well as to the continental colonies, while furs were sent to Europe; in the southern colonies, England was the chief market, except for rice which could be sent during most of the period to southern Europe. To insure the quality of these staple commodities it was essential that inspection regulations should be adopted. Moreover, numerous attempts were made to encourage the production of certain articles by means of bounties. In the northern colonies the main effort seems to have been concentrated upon certain commodities like hemp and flax, which could be worked up in the household. The southern colonies, however, sought to diversify production by bounties upon such products as wine, silk, and shipbuilding, but in most instances they were to a large degree unsuccessful. In Maryland and Virginia the staple was tobacco; further south, rice, indigo and naval stores were important. These furnished the chief means for subsistence; anything else, like silk and wine, was scarcely fitted, economically speaking, for the people or the soil. The approach of the Revolution tended to emphasize the grant of bounties,

public and private, for hemp, flax and wool, which were worked up into wearing apparel.

Since the means of communication for trade purposes at least were practically limited to water transportation, a body of navigation and port regulations developed in all of the colonies. In part, these regulations were provided by England, but in the main, by the colonial assemblies. The various phases of these regulations were all essential for the proper control of commerce. England was especially interested in the problem of ports of entry and the regulation of the fees of the collector and other customs officers who were responsible to her for the enforcement of the parliamentary acts of trade and navigation. Otherwise, in the enactment of navigation regulations the colonial assemblies were comparatively free from interference by the home government; most of the disputes occurred between the Governor and the council on the one hand, and the Assembly on the other; relatively few went farther.

The colonies did not observe strictly the parliamentary acts of trade and navigation. In the main, however, their chief trade relations were with England and the British West Indies. The Revolution interrupted trade, and commercial legislation on the part of the states dwindled down to insignificant proportions, with the exception of the embargoes. Before the war was over the states sought to create new markets, and continued these attempts subsequent to the war. The economic factors—cheap goods from England, long terms of credit, the lack of suitable or rather sufficient home industries—were against them. Since peace made the thirteen states sovereign and independent, England's colonial policy was enforced against the states. They considered this in the light of a discrimination, and sought to retaliate. Various expedients were used, and it was the outcome of these conditions that led to

the encouragement of home industries in the northern states—a system which was developed during the constitutional period. The very fact that the states were sovereign, and regulated their commerce practically from the standpoint of self-interest, revealed the weakness of the Confederacy. Congress again and again attempted to secure the consent of the states to carry out uniform tariff or shipping regulation; its efforts were practically fruitless. Yet this weakness led to the constitutional convention, and the grant of greater powers to the central government, particularly over interstate and foreign commerce.

The commercial legislation for the period subsequent to the Revolution has been treated at length, and properly so, in historical works. That for the earlier period has received very little attention. This is all the more striking on account of the importance that attaches to the economic conditions throughout the whole period. Although the number of inhabitants in the several colonies never was very large, viewed from our present standpoint, their location and their dependence on trade and navigation led the colonies to provide numerous commercial regulations—much more than we are sometimes inclined to suppose. Moreover, many of these regulations were incorporated directly into our federal legislation, or formed the basis of such enactments.

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INDEX

- "Act for Ports," 106.
- Acts, for encouragement of trade, 8; restricting exports, 7; retaliatory, 40.
- Administrative machinery, for enforcement of acts, 108; lack of efficient, 109; commissions for, 111.
- Admiralty courts, 107.
- Annapolis, Convention of, 146.
- Bibliography, 154-163.
- Board of Trade and Plantations, establishment of, 150; supervision by, 13.
- Bounties, 59; export, occasional, 73; for exportation, 71; for production, 60; not always successful, 62; on provisions, 68; on shipbuilding, 69.
- "Castle duties," 87.
- Colonial laws, commercial division of, 13.
- Colonial legislation, supervision of, 9.
- Colonies, early charter requirements for, 12; chief trade relations of, 152; intended for England's own benefit, 16; permitted to legislate for their own needs, 11; types of, in America, 9.
- Commerce, attempts of Congress to regulate, 140; power of Congress over, 147.
- Commercial agents abroad, 144.
- Commercial legislation, by the Confederacy, 140; by the states, 123; classification of, 18.
- Commercial policy, development of England's, 3.
- Direct trade, legislation on, 22; duties on, 21.
- Discrimination, against British goods, 129; of duties by the colonies, 30; in duties on imports, 128.
- Drawbacks, 41.
- Embargo acts, administration of, 84.
- Embargoes, 80; as a war measure, 4, 82; during the Revolution, 123; for short periods, 124.
- English goods, and imposts thereon, 26.
- English merchant, opposition to interests of, 28.
- "Enumerated" commodities, 20; exportation of, 5.
- Export duties, importance of, 44, 57; purpose of, 43; scope of, 42.
- Exports, acts restricting, 7; chief destination of, 151.
- Federal convention of 1787, 146.
- Free trade, 36.

- French, trade with, 83.
- Governors, instructions to, 15.
- Grenville ministry, policy of, towards colonies, 8.
- Home manufactures, aid to, 131.
- Import duties on direct trade, 21; scope of, 18.
- Importation of goods, 36.
- Indians, trade with, 54.
- Inspection laws, administrative effects of, 79; inspection regulations, 74.
- Lumber, export duties on, 49.
- Mercantile system, fundamental characteristics of, 1.
- "Molasses Act," 7.
- Navigation, act of 1651, 3; attempts of Congress to regulate, 142; regulations, 100.
- Negro plot of 1711, 35.
- Pilotage, 118; compulsory and optional, 121; laws, 119.
- Pilots, appointment and duties of, 118.
- Port, control, 100; fees, a practice opposed to, 117; fees, extent and policy of, 113.
- Port regulations, 100.
- Port Wardens, Board of, in Philadelphia, in 1766, 120.
- Ports, of entry, 100; Maryland, limitation of, 105; Perth Amboy, contest over, 103.
- "Powder money," 87.
- Preferential duties, 8.
- Reciprocity principle in 1778, 144.
- Registry of vessels, 112.
- Restrictions upon commodities, 6.
- Retaliatory acts, 40.
- Revolution, embargoes during the, 123; shipping policy during the, 137.
- Shipping, embargoes on, 83; home, exemptions to, 90; industry, favoring of, 23; policy, during the Revolution, 137; protection of, 4.
- Ships, of other colonies, exemptions to, 96; measurements of, 113.
- Silk, bounties on, 65.
- Skins and furs, export duties on, 53.
- Slaves, import duties on, 31; New York's legislation on, 34; no general unity of legislation on, 32; tendency of legislation on, 35;
- Southern colonies, exemptions to home shipping by, 94; more ports in, 102; trade system of, 39.
- Stamp Act, 9.
- "Sugar Bill" of 1764, 9.
- Tariff, features of, discrimination in, 134; important features of, 131; for home protection, instituted by northern states, 131.
- Tariff legislation, 125; complicated by export duties in southern states, 135; motives for, 126, 136; system of New York, 37; elaborate in South Carolina, 39.
- Tenche Coxe, statement of, regarding tonnage duties, 139.
- Tobacco, export duties on, 45; inspection laws for, 77.
- Tonnage duties, and English

- ships, 88; not imposed in middle colonies, 92; purpose of, 86.
- Trade regulations, importance of, in the colonies, 149.
- Washington's aid to home manufactures, 131.
- Wines and spirituous liquors, duties on, 19, 25.



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